UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 16

IRONTIGEŖ	LOGISTICS,	INC.
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and

Case 16-CA-27543

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case No. 16-CB-8084

IRONTIGER LOGISTICS, INC.

BRIEF IN SUPPORT OF ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO TRANSFER AND SEVER THE CASES

Submitted this 4th day of March, 2011

Submitted by:

Kelly Elifson Counsel for Acting General Counsel National Labor Relations Board Region 16 Room 8A24, Federal Office Bldg. 819 Taylor Street Fort Worth, Texas 76102

STATEMENT OF ISSUE

Acting General Counsel argues that Respondent's Motion for Summary Judgment and Motion to Transfer and Sever the Cases should be denied for two main reasons. First, Respondent has failed to meet its burden as movant to show there is no genuine issue of material fact in dispute. As discussed below, the pleadings raise substantial and material issues of fact and law that are in dispute and must be resolved through a hearing: namely, the Respondent disputes its obligation to respond to the information request and its obligation to furnish the requested information; and, the Respondent also disputes the relevance of the requested information. Second, Respondent's motion should be denied because the Regional Director appropriately consolidated Cases 16-CB-8084 and 16-CA-27543 pursuant to Section 102.33 of the Board's Rules and Regulations, in the interest of judicial economy and minimizing costs to the parties. In demonstrating that Respondent's motion should be denied, Acting General Counsel will discuss the legal standard applicable to summary judgment motions, give a statement of facts, and will present arguments regarding summary judgment and why the cases should not be severed.

LEGAL STANDARD IN MOTIONS FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure establishes that, in ruling on motions for summary judgment, a judgment will be rendered in favor of the motion "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Applying Rule 56(c), the Board has denied, under Section

102.24(b) of the Rules and Regulations, motions for summary judgment, where a respondent failed to show that no genuine issues of material fact exist. See *Triple A Fire Protection, Inc.*, 353 NLRB No. 88, slip op. (2009); *KIRO, Inc.*, 311 NLRB 745 (1993) (an information request allegation); and, *USPS*, 311 NLRB 254 (1993) (an information request and ruling on the respondent's cross-motion for summary judgment). Similarly, in *Lake Charles Memorial Hospital*, 240 NLRB 1330 (1979), the Board denied General Counsel's motion for summary judgment because the case presented substantial and material issues of fact and law that would best be resolved at a hearing before an administrative law judge.¹

On summary judgment, the Supreme Court has ruled that inferences drawn from underlying facts contained in materials presented by the parties must be viewed in the light most favorable to the party opposing the motion. *Lake Charles Memorial Hospital*, 240 NLRB 1330, 1331 fn. 4 (1979), citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). Further, under Section 102.24(b) of the Board's Rules and Regulations, the party opposing the motion is not required to submit affidavits or documentary evidence to show that there is a genuine issue for hearing. This Section provides that the Board may, in its discretion, deny the motion where the motion itself fails to establish there is no genuine issue, or where the opposing party's pleadings demonstrate on their face that a genuine issue exists.

STATEMENT OF FACTS

The Respondent is engaged in the interstate transportation of new trucks from production facilities. The Respondent operates four terminals located in Dublin, Virginia; Macungie, Pennsylvania; Springfield, Ohio; and Garland, Texas. There is a

¹ In its brief, Respondent incorrectly cites this case as 250 NLRB 1330 (1979).

Association of Machinists (herein Union) that applies to these four locations.

The information request at issue in Case 16-CA-27543 was prompted by an email sent on May 7, 2010 from the Respondent to the Union in response to an earlier information request. The earlier information request, sent by the Union on April 12, 2010, requested different items from the information request at issue in Case 16-CA-27543. Upon reviewing the information provided by the Respondent on May 7, 2010 in response to the April 12 request, the Union submitted a new information request on May 11, 2010, asking for different items to prepare a class-action grievance filed on behalf of employees at the Pennsylvania, Virginia, and Texas locations. See paragraph 13 of Acting General Counsel's Exhibit 1. The May 11, 2010 information request references the Respondent's May 7 e-mail. See Respondent's Exhibit 7. Specifically, on May 11, the Union requested the following information:

- The names of each TruckMovers driver dispatched on the units referenced in the Employer's May 7 e-mail.
- 2.) The destination and mileage for each unit dispatched to TruckMovers drivers referenced in the Employer's May 7 e-mail.
- 3.) Don Houk's primary employer.
- 4.) Don Houk's job title.
- 5.) The name(s) of the person(s) who authorized Don Houk to dispatch to TruckMovers drivers the units referenced in the Employer's May 7 e-mail.
- 6.) An explanation in detail of the "system assignment" referenced in the Employer's May 7 e-mail.

- 7.) All e-mails, transcripts, faxes, telecommunications and other documentation from customers to support the units dispatched to TruckMovers drivers and referenced in the Employer's May 7 e-mail.
- 8.) The names of each IronTiger driver dispatched on the units referenced in the Employer's May 7 e-mail.
- 9.) The destination and mileage for each unit dispatched to IronTiger drivers referenced in the Employer's May 7 e-mail.
- 10.) All e-mails, transcripts, faxes, telecommunications and other documentation from customers to supports the units dispatched to IronTiger drivers and referenced in the Employer's May 7 e-mail.

When the Union did not receive a response to this request, the Union resubmitted it on July 30, 2010. The Union filed the charge in Case 16-CA-27543 on July 15, 2010. Respondent admits it did not respond to the information request until September 27, 2010, which is after the Region issued a decision in the case and over four months after the original May request. In its September 27 response, the Respondent requested that the Union explain the relevance of items 1, 2, 8 and 9 of the May 11 information request. The Respondent also argued for the first time that items 8 and 9 were unduly burdensome. The Respondent did provide the information requested in items 3, 4, 5, 6, 7 and 10. With respect to items 6, 7 and 10, the Respondent informed the Union there were no written responsive documents. See Respondent's Exhibit 10. To date, the Respondent has not provided items 8 and 9, even though these items concern bargaining unit employees.

ARGUMENTS

As discussed below, Respondent has failed to satisfy the legal standard for summary judgment. In its own pleadings, Respondent disputes its obligation to respond to the information request, its obligation to furnish the requested information, and the relevance of the requested information. Lastly, Respondent has failed to show how the Regional Director's consolidation of Cases 16-CB-8084 and 16-CA-27543 is inappropriate and why the cases should be severed.

I. Respondent Disputes Its Obligation to Respond to the Information Request and Its Obligation to Furnish the Requested Information, Creating Issues of Material Fact and Demonstrating It is Not Entitled to Summary Judgment

In its Answer to the Consolidated Complaint and in its motion for summary judgment, the Respondent argues it never had an obligation to furnish any information because the information request was never made relevant. The information requested by the Union on May 11, 2010 concerns both bargaining unit employees and non-unit employees. For example, items 8 through 10 pertain to bargaining unit employees, while items 1, 2 and 7 involve non-unit employees. Information pertaining to bargaining unit employees is presumed to be relevant, and the requester does not need to provide an initial showing of relevance. *International Protective Services, Inc.*, 339 NLRB 701 (2003). See also, *Hofstra University*, 324 NLRB 557 (1997) and *Dyncorp/Dynair Services*, 322 NLRB 602 (1996), enfd. 121 F.3d 698 (4th Cir. 1997). In fact, the burden to justify a failure to produce presumptively relevant information is on the non-requester, who must rebut the presumption of relevance. *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003). Meanwhile, information about non-unit employees may be considered non-

presumptively relevant information, for which the requester must provide an initial showing of relevance. *The Earthgrams Company*, 349 NLRB 389 (2007).

The evidence demonstrates that the Respondent failed to respond to the May 11 information request until September 27, 2010, after the Region's September 2010 decision. As demonstrated in Respondent's Exhibit 10, it was not until September 27, 2010 that the Respondent requested clarification as to the relevance of certain items in the request and argued some of the items (8 and 9, which pertain to bargaining unit employees) were unduly burdensome. It is well-established that "an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to the extent that it encompasses necessary and relevant information." Superior Protection, Inc., 341 NLRB 267, 269 (2004), enfd. 401 F.3d 282 (5th Cir. 2005). See also Streitcher Mobile Fueling, Inc., 340 NLRB 994, 995 (2003), aff'd. 2005 WL 1395063 (11th Cir. 2005) (unpublished); Gruma Corp., 345 NLRB 788 (2005); and, Azabu USA (Kona) Co., 298 NLRB 702 (1990). Further, the employer is not excused from responding where the information request is not specifically limited to bargaining unit employees and therefore, could be construed as requesting information pertaining to nonunit as well as unit employees. Streitcher Mobile Fueling, 340 NLRB at 995.

Nevertheless, in its Answer to the Consolidated Complaint, the Respondent disputes the allegations contained in paragraphs 15 and 18 respectively, denying it has failed to timely furnish the Union with the requested information and that it has been failing and refusing to bargain collectively and in good faith with the Union. A dispute exists as to the obligation to respond to the information request and the obligation to

furnish the requested information, and, therefore, an evidentiary hearing before an administrative law judge is necessary to resolve these issues.

II. Respondent is Not Entitled to Summary Judgment As a Matter of Law Because It Disputes the Relevance of the Requested Information.

The pleadings demonstrate there is a dispute as to the relevance of the requested information. In its answer to the Consolidated Complaint and in its motion for summary judgment, the Respondent denies the allegation contained in paragraph 14, which alleges the requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative. As noted above, the information request contains items that are presumptively relevant, as well as items that may be considered non-presumptively relevant, but for which the Union must be given an opportunity to provide an initial showing of relevance.

Here, the question of relevance is not a purely legal issue that should be resolved in the first instance by the Board rather than an administrative law judge. Instead, the resolution of this question of relevance depends on factual circumstances which are in dispute. *KIRO, Inc.*, 311 NLRB 745 (1993), citing *Leland Stanford Junior University*, 262 NLRB 136 (182). See also *Press Democrat Publishing Co. v. NLRB*, 629 F.2d 1320, 1324 (9th Cir. 1980); and, *General Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983). Neither the Respondent's answer to the Consolidated Complaint nor its motion for summary judgment admit the factual allegations of the Consolidated Complaint material to the resolution of the alleged unfair labor practice. Compare *Endicott Forging & Mfg., Inc.*, 326 NLRB 1247 (1998) (Board granted General Counsel's summary judgment motion when the respondent admitted all the fact issues raised in the complaint). There is also no stipulation of facts pertinent to the information request

issue. Therefore, the resolution of relevance here is not purely a legal question but instead depends on contested factual issues requiring an evidentiary hearing.

III. The Cases Should Not be Severed Because Consolidation was Appropriate Under Section 102.33 of the Rules and Regulations.

The Regional Director issued the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing Cases 16-CB-8084 and 16-CA-27543, pursuant to Section 102.33 of the Board's Rules and Regulations. The parties are the same in both cases, and both parties have representatives outside of Texas who will have to travel to attend the hearing scheduled in Fort Worth, Texas. Further, the cases involve many of the same witnesses. The violations alleged in Cases 16-CB-8084 and 16-CA-27543 are chronologically relatively close in time. Thus, the consolidation of these cases considers the interests of the Respondent and Union in avoiding unnecessary and costly multiple litigation and conforms to the government's goals of minimizing costs and delay. See *Raytheon Co.*, 279 NLRB 245 (1986). The Respondent has failed to explain in its motion to transfer and sever the cases why the cases should be severed. Therefore, in the interest of judicial economy and minimizing costs to the parties, the Respondent's motion to transfer and sever the cases should be denied.

CONCLUSION

The Respondent has failed to establish there is no genuine issue of material fact in dispute. Instead, the pleadings raise substantial and material issues of fact and law which may best be resolved at a hearing conducted before an administrative law judge.

Specifically, there are genuine issues of material fact and law with respect to the obligation of the Respondent to respond to the information request, the obligation of the

Respondent to furnish the requested information, and the relevance of the requested information. These are clearly disputed material issues of fact and law which should not be resolved on a motion for summary judgment but instead require an evidentiary hearing before an administrative law judge. In addition, Cases 16-CB-8084 and 16-CA-27543 were correctly consolidated and should not be severed. For the foregoing reasons, Counsel for the Acting General Counsel respectfully requests that Respondent's Motion for Summary Judgment and Motion to Transfer and Sever the Cases be, in all forms, denied.

DATED at Fort Worth, Texas, this 4th day of March, 2011.

Kelly Elifson, Counsel for Acting General Counsel

National Labor Relations Board

Region 16

Room 8A24, Federal Office Bldg.

819 Taylor Street

Fort Worth, Texas 76102

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 16

IRONTIGER LOGISTICS, INC.

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Case 16-CA-27543

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case No. 16-CB-8084

IRONTIGER LOGISTICS, INC.

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Upon a charge filed on May 24, 2010, by IronTiger Logistics, Inc., here called Employer, a Complaint and Notice of Hearing issued on September 30, 2010 against the International Association of Machinists and Aerospace Workers, AFL-CIO, here called Union, and the Union in Case 16-CA-27543 has charged that Employer has been engaged in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., here called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, here called the Board, **ORDERS** that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

- a. The charge in Case 16-CB-8084 was filed by the Employer on May 24, 2010, and a copy was served upon the Union by first class mail on May 25, 2010.
- b. The first amended charge in Case 16-CB-8084 was filed by the Employer on July 29, 2010, and a copy was served upon the Union by first class mail on July 30, 2010.
- c. The second amended charge in Case 16-CB-8084 was filed by Charging Party on September 3, 2010, and a copy was served upon the Union by first class mail on the same date.
- d. The charge in Case 16-CA-27543 was filed by the Union on July 15, 2010 and a copy was served upon the Employer by first class mail on July 16, 2010.
- e. The first amended charge in Case 16-CA-27543 was filed by the Union on December 1, 2010, and a copy was served upon the Employer by first class mail on December 7, 2010.

2.

At all material times, the Employer, a Missouri corporation, with an office and place of business in Garland, Texas (Employer's Garland facility), and an office and place of business in Springfield, Ohio (Employer's Springfield facility), has been engaged in the interstate transportation of freight.

3.

During the twelve-month period ending November 30, 2010, a representative period, the Employer, in conducting its business operations described above in paragraph 2, derived gross revenues in excess of \$50,000 for the transportation of freight from the State of Texas directly to points outside the State of Texas.

4.

At all material times, the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6.

a. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Union within the meaning of Section 2(13) of the Act.

Boysen Anderson

Automotive Coordinator

Mark Hammond

Business Representative

b. At all material times, Tom Duvall held the position of the Employer's President and has been a supervisor of the Employer within the meaning of Section 2(11) of the Act and an agent of the Employer within the meaning of Section 2(13) of the Act.

c. At all material times, Tom Jones has been a supervisor of the Employer within the meaning of Section 2(11) of the Act and an agent of the Employer within the meaning of Section 2(13) of the Act.

7.

a. The following employees of the Employer's Garland facility (Garland Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All yard workers, shop workers, utility workers and drivers who are domiciled and employed by the Employer at its Terminal facility in Garland Texas.

Excluded: All confidential employees, office clerical employees, supervisors, and guards as defined in the National Labor Relations Act, as amended, and all other employees.

b. The following employees of the Employer's Springfield, Ohio facility, herein called the Springfield Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All yard workers, shop workers, utility workers and drivers who are domiciled and employed by the Employer at its Terminal facility in Springfield, Ohio.

Excluded: All confidential employees, office clerical employees, supervisors, and guards as defined in the National Labor Relations Act, as amended, and all other employees.

8.

a. Since January 2010, and at all material times thereafter, the Union has been the exclusive bargaining representative of the Garland Unit, and since then, the Union has been recognized as such representative by the Employer. This recognition has been embodied in a recognition agreement dated January 21, 2010.

b. Since January 2010, and at all material times thereafter, the Union has been the exclusive bargaining representative of the Springfield Unit, and since then, the Union has been recognized as such representative by the Employer. This recognition has been embodied in a recognition agreement dated January 21, 2010.

9.

- a. Since on or about January 21, 2010, the Union, by virtue of Section 9(a) of the Act, has been the exclusive bargaining representative of the Garland Unit.
- b. Since on or about January 21, 2010, the Union, by virtue of Section 9(a) of the Act, has been the exclusive bargaining representative of the Springfield Unit.

10.

- a. On or about January 21, 2010, the Employer and the Union reached complete agreement on terms and conditions of employment of the Garland and Springfield Units to be incorporated in a collective-bargaining agreement with an expiration date of September 30, 2011.
- b. Since on or about January 21, 2010, the Employer and the Union signed letters of agreement embodying the agreements described in paragraph 10a.
- c. On or about February 13, 2010, the Garland Unit voted to ratify the agreement described in paragraphs 10a and 10b.
- d. On or about March 6, 2010, the Springfield Unit voted to ratify the agreement described in paragraphs 10a and 10b.

- a. On or about February 13, 2010, the Employer and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the Garland Unit, which agreement was to remain in effect until September 30, 2011.
- b. On or about March 6, 2010, the Employer and the Union entered into a collective-bargaining agreement with respect to terms and conditions of employment of the Springfield Unit, which agreement was to remain in effect until September 30, 2011.

12.

- a. Since on or about May 24, 2010, and on numerous occasions thereafter, the Union has threatened to engage in a strike against the Employer at its Garland, Texas facility.
- b. Since on or about May 24, 2010, and on numerous occasions thereafter, the Union has threatened to engage in a strike against the Employer at its Springfield, Ohio facility.
- c. The Union engaged in the conduct described above in paragraphs 12a and 12b in an effort to modify or terminate the agreement described above in paragraphs 10 and 11.
- d. The terms and conditions of employment, described above in paragraphs 11a and 11b, are mandatory subjects for the purpose of collective bargaining.

13.

On or about May 11, 2010, the Union, by electronic mail, requested that the Employer furnish the Union with the following information:

a. The names of each TruckMovers driver dispatched on the units referenced in the Employer's May 7 e-mail.

- b. The destination and mileage for each unit dispatched to TruckMovers drivers referenced in the Employer's May 7 e-mail.
- c. Don Houk's primary employer.
- d. Don Houk's job title.
- e. The name(s) of the person(s) who authorized Don Houk to dispatch to TruckMovers drivers the units referenced in the Employer's May 7 e-mail.
- f. An explanation in detail of the "system assignment" referenced in the Employer's May 7 e-mail.
- g. All e-mails, transcripts, faxes, telecommunications and other documentation from customers to support the units dispatched to TruckMovers drivers and referenced in the Employer's May 7 e-mail.
- h. The names of each IronTiger driver dispatched on the units referenced in the Employer's May 7 e-mail.
- i. The destination and mileage for each unit dispatched to IronTiger drivers referenced in the Employer's May 7 e-mail.
- j. All e-mails, transcripts, faxes, telecommunications and other documentation from customers to supports the units dispatched to IronTiger drivers and referenced in the Employer's May 7 e-mail.

The information requested by the Union, as described above in paragraph 13, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Units.

15.

Since about May 11, 2010, the Employer has failed to timely furnish the Union with the information requested by it as described above in paragraph 13.

16.

By the conduct described above in paragraph 12, the Union has been failing and refusing to bargain collectively and in good faith with an employer within the meaning of Section 8(d) of the Act in violation of Section 8(b)(3) of the Act.

17.

By the conduct described above in paragraph 12, the Union has been violating Section 8(d) of the Act.

18.

By the conduct described above in paragraphs 13 through 15, the Employer has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

19.

The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 13, 14, 15, and 18, the Acting General Counsel seeks an order requiring that Respondent promptly e-mail the notice to employees consistent with Employer's normal method of communicating with employees.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before January 5, 2011 or postmarked on or before January 4, 2011. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on the E-Gov tab, select E-Filing, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the Efiling rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on March 28, 2011, at 9:00 a.m. at the Regional Office of the National Labor Relations Board located 819 Taylor Street, Suite 8A24, Fort Worth, Texas, 76102 and on consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony regarding the allegations in this complaint. The procedures to be followed at this hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Fort Worth, Texas, this 22nd day of December, 2010.

Martha Kinard Regional Director

National Labor Relations Board

Region 16

Room 8A24, Federal Office Bldg.

819 Taylor Street

Fort Worth, TX 76102

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 16

IRONTIGER LOGISTICS, INC.

and

Case 16-CA-27543

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case 16-CB-8084

IRONTIGER LOGISTICS, INC.

IRONTIGER'S ANSWER TO ORDER CONSOLIDATES CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Without admitting there is a factual or legal basis in the first paragraph or that the prosecution of the charge in Case 16-CA-27543 filed against IronTiger Logistics, Inc., hereinafter referred to as the Employer, has substantial justification, the Employer agrees with the other statements except that the Employer objects to consolidation and believes Case 16-CA-27543 should be severed. While the parties are the same in both cases, the underlying facts and legal issues are completely different in each case and, further, currently the Employer is considering filing a Motion for Summary Judgment under Section 102.24 of the Rules and Regulations of the National Labor Relations Board (NLRB). Other than this Motion and the probability of an Order to Show Cause being issued and a need to sever this case, the Employer has no objection to the consolidation if a Motion is not filed or this Motion is not granted.

1.

Admit the allegations in paragraphs 1.a. through 1.e.

2.

Admit the allegations in paragraph 2.

3.

Admit the allegations in paragraph 3.

4.

Admit the allegations in paragraph 4.

5.

Admit the allegations in paragraph 5.

6.

Admit the allegations in paragraphs 6.a. and 6.b. and denies the allegations of 6.c. and affirmatively states that Tom Jones is an outside counsel representing the Employer in labor and employment matters.

7.

Admit the allegations in paragraphs 7a. and 7.b.

8.

Admit the allegations in paragraphs 8.a. and 8.b. and affirmatively states that the Employer had voluntarily recognized the Union on a card check at the bargaining units for which the parties have a Collective Bargaining Agreement (CBA).

9.

Admit the allegations in paragraphs 9.a. and 9.b.

10.

Admit the allegations in paragraphs 10a. through 10.d.

11.

Admit the allegations in paragraphs 11.a and 11.b.

12.

Admit the allegations in paragraphs 12.a. through 12.d.

13.

Admit the allegations in paragraphs 13.a. through 13.j. and deny any inference that the information request was relevant. Affirmatively state that the Union previously requested irrelevant information on April 12, 2010 and the Employer, on May 7, 2010, sent a 30-page response to this request.

Deny the allegations of paragraph 14 and affirmatively state that the information requested, besides being irrelevant, does not exist and for the following reasons the Complaint in case 16-CA-27543 should be dismissed:

- a. The underlying grievance for which information is requested provides "Nature of Grievance: The Employer is not placing all available loads on the dispatch board" and it involves subcontracting allegations. Nothing about the May 11, 2010 request is presumptively relevant. See <u>Disneyland Park</u>, 350 NLRB 1256, 1258 (2007).
- b. The Collective Bargaining Agreement (CBA) and, specifically, a "Letter of Agreement" between the Employer and the Union, gives the Employer the unilateral and unqualified right to assign work and it provides:

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011.

Agreed to this 29th day of September, 2008.

c. The Union has not and can not provide any violation for none could exist under the above language. However, the Employer has requested that the

Union tell it when, where, who, what and how many times there was a contract violation or why the request for information is relevant, not burdensome, ambiguous, etc., and the Union, by Boysen Anderson, referred to in paragraph 6.a. above, has refused to identify any incidents and sometimes stating in response to the Employer's request, "Enough of this bullshit" and "...don't question what I believe." Another response from the Union and Boysen Anderson was merely, "Bullshit you WILL abide by the contract" without any explanation or clarification of its position. The Employer has continually told the Union that all loads were placed on the dispatch board or kiosk; however, the Union has failed to explain its position and has not provided objective evidence of relevancy. Absent such a showing, the Employer has no obligation to provide anything. See Disneyland at page 1258.

- d. The Union, on December 1, 2010, after previously changing its position for requested information since May 11, 2010 and now, in an e-mail, limits its overall request and "reformulated" it to 1.) Explain the system assignment for loads and 2.) Request copies of communications regarding load assignments.
- e. On December 20, 2010, before the Complaint issued in the Regional Office, the Employer responded by e-mail and reminded Boysen Anderson that he was personally involved in designing and recommending the

paperless kiosk and the system assignment generally and, secondly and as important, no document exists responsive to Boysen Anderson's request. These e-mails were sent to the Regional Office before the Complaint was issued in case 16-CA-27543.

f. That as early as May 7, 2010, and before the May 11, 2010, Boysen Anderson's request for information, the subject of this Complaint, the Union was told by e-mail that, "8. N/A Done by system assignment not through e-mail or other written communication." Thus, no such document exists now or before or after May 11, 2010 or before or after December 1, 2010 and the Union and the Regional Office knew that.

15.

Deny the allegations in paragraph 15 and affirmatively state that the Employer never had any legal obligation to furnish any requested information and any documentary information requested because it does not exist. See affirmative statements in paragraph 14 above. Without a legal obligation there is no legal basis to claim a delay in responding because the Union was told on May 7, 2010 that no documents exist. Further, it is not an unfair labor practice because you can not give something sooner that you do not have and again, as important, Boysen Anderson was told that no documents exist consistent with his request, before his request of May 11, 2010 was even made. There was no delay.

Admit the allegations in paragraph 16.

17.

Admit the allegations in paragraph 17.

18.

Deny the allegations in paragraph 18 and affirmatively state that besides the facts alleged above, in paragraphs 14 and 15, the Company asked the Union for meetings to discuss the grievance and the requested information as early as April 5, 2010 and five additional meetings. Boysen Anderson refused to meet. Even before, and immediately after the grievance was filed, the Employer asked for a meeting to explain its position and Boysen Anderson, on March 16, 2010, responded in an e-mail, "Bullshit you WILL abide by the contract." That is all he has stated and other comments made since then are as unintelligible. That does not meet the Union's burden to support its request for information for it must be based on objective factors and evidence. See Disneyland at page 1258.

<u>Further</u>, the Union has failed to meet its obligation under §8(b)(3) of the Act to provide the Employer with information of a contract violation. Boysen Anderson never gave the Employer any evidence of a contract violation and clearly no objective evidence of how any of this relates to the Union's request for information.

<u>Further</u>, if the Union knows of a contract violation, why seek information? The Union broke off the grievance process and sought to process the issue to arbitration. The grievance process ended on April 5, 2010 and that was before the request for information. The request here

is thus pretrial discovery for arbitration not allowed under the NLRA. See <u>California Nurses</u>

<u>Assoc.</u> 326 NLRB 1362 (1998).

<u>Further</u>, Boysen Anderson requested information and names of non-union employees related to his comments that the Union intends to organize other non-union drivers for which he told the Employer he already had "Authorization Cards." This makes his request for names presumptively irrelevant.

19.

Deny the allegations in paragraph 19.

The Employer further denies any other statements or allegations in the Complaint and the "Wherefore" provision. The Employer states the Complaint regarding 16-CA-27543 should be dismissed and any other remedy provided to the Employer, including but not limited to, an award under the Equal Access to Justice Act (EAJA) because, based on information and belief, the criteria under 5 U.S.C. §504 and 102.143, et seq. of the NLRB Rules and Regulations are met and after complete litigation and after a final Order in Case Number 16-CA-27543 it will be shown that there was no "substantial justification" for the prosecution of this Charge and Complaint in Case 16-CA-27543 for which an award under EAJA should be made.

DATED at Milwaukee, Wisconsin, this 4th day of January, 2011.

Thomas P. Krukowski

WI State Bar No. 01013222

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February 4, 2011

Lester A. Heltzer Executive Secretary National Labor Relations Board 1099 14th Street NW Washington, DC 20570 Krukowski & Costello, S.C. Attorneys at Law

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Re: <u>Irontiger Logistics, Inc. and International Association of Machinists and Aerospace</u>
Workers, AFL-CIO Case 16-CA-27543 and Case 16-CB-8084

Dear Mr. Heltzer:

Pursuant to instruction given by the Office of the Executive Secretary of the National Labor Relations Board, we have electronically filed, using the E-filing system of the NLRB's website, IronTiger Logistics, Inc.'s Motion For Summary Judgment, Brief in Support of Motion, and Affidavit of Tom Jones in Support of Summary Judgment Brief, Pursuant To Section 102.24 Of The Rules And Regulations Of The National Labor Relations Board And Motion To Transfer And Sever The Cases And Continue Case 16-CA-27543 Before The National Labor Relations Board, and a Certificate of Service.

If you have any questions, please contact me.

Very truly yours,

KRUKOWSKI & COSTELLO, S.C.

Thomas P. Knikman

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TPK/sls Enclosures

Martha Kinard, Regional Director, NLRB Region 16 William Haller, Associate General Counsel, IAMAW Rod Tanner, Tanner and Associates, Attorney for the Union

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

IRONTIGER	LOGISTICS,	, INC.

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case 16-CB-8084

Case 16-CA-27543

IRONTIGER LOGISTICS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 4, 2011, a copy of Respondent IronTiger Logistics, Inc.'s Motion For Summary Judgment, Brief in Support of Motion, and Affidavit of Tom Jones in Support of Summary Judgment Brief, Pursuant To Section 102.24 Of The Rules And Regulations Of The National Labor Relations Board And Motion To Transfer And Sever The Cases And Continue Case 16-CA-27543 Before The National Labor Relations Board, and Certificate of Service was electronically filed by using the E-Filing system of the National Labor Relations Board's website, and served in the same manner as that utilized in filing with the Board, on the following individuals listed below:

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

IRONTIGER LOGISTICS, INC.

and

Case 16-CA-27543

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case 16-CB-8084

IRONTIGER LOGISTICS, INC.

IRONTIGER LOGISTICS, INC.'S

MOTION FOR SUMMARY JUDGMENT FILED PURSUANT TO
SECTION 102.24 OF THE RULES AND REGULATIONS OF
THE NATIONAL LABOR RELATIONS BOARD AND
MOTION TO TRANSFER AND SEVER THE CASES AND CONTINUE
CASE 16-CA-27543 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Now comes IronTiger Logistics, Inc., by its attorney Thomas P. Krukowski of the law firm of Krukowski & Costello, S.C., and files this Motion for Summary Judgment pursuant to Section 102.24 of the National Labor Relations Board (NLRB).

- A Complaint in the above matter was signed by Martha Kinard, Regional Director of the National Labor Relations Board, Region 16, on December 22, 2010.
- 2. On January 4, 2011, IronTiger Logistics, Inc. (Employer) answered the Complaint and served said Answer.

- 3. That a hearing has been scheduled for March 28, 2011.
- 4. That the Employer filed this Motion because, based on the Complaint and Answer and other information, documents and affidavits, and supporting brief, there is no genuine issue as to any material fact and the Employer is entitled to a dismissal of the Complaint as a matter of law in Case No. 16-CA-27543.
- 5. That the Complaint against the Employer in Case No. 16-CA-27543 was consolidated with a Complaint against the International Association of Machinists (Union) and the Employer requests that the cases be severed and that Case No. 16-CA-27543 be transferred to the Board and that the Board issue an Order transferring the proceedings to itself and also issue an Order to Show Cause why the Employer's Motion should not be granted and ultimately grant the Motion for Summary Judgment and dismiss the Complaint in 16-CA-27543.
- 6. The essence of the Regional Director's Complain in Case No. 16-CA-27543 is that the Employer ". . . failed to timely furnish the Union with information requested by it. . . ."

 (See paragraph 16 of the Complaint).
- 7. The Union's grievance claims that, "The Employer is not placing all available loads on the dispatch board." However, the CBA provides that, ". . . loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers

other than IronTiger Logistics. . ." This unqualified language trumps any possible contract violation. The CBA completely and unequivocally contradicts the Union's claim. It's that simple. At no time has the Union submitted any evidence of the contract violation after numerous requests by the Employer; nor is it possible! There are no facts in dispute here! The employer never had an obligation to furnish any information. The IAM's requests were never made relevant because it only made a conclusionary allegation without any supporting arguments or, more importantly, any facts. Throughout this entire time the Union has failed to provide objective evidence of a contract violation and has failed to explain its request with any degree of precision.

- 8. The Union reformulated its request for information on December 1, 2010 to
 - 1.) Explain the assignment for loads.
 - 2.) Request copies of communications regarding load assignments.

The Employer's second defense, and reason it believes no unfair labor practice has been committed and there are no facts in dispute, is based on the Employer's response to the Union's reformulation or changes in the Union's position.

9. The Employer timely responded. On December 20, 2010, before the Complaint issued by the Regional Office, the Employer responded by e-mail and reminded Boysen Anderson, the IAM representative who had full knowledge of the system for assigning employees, because he personally was involved in designing and recommending the very kiosk system used by the Employer and the system assignment that was implemented after agreement. Secondly and as important, no document exists responsive to the

Union's request. These e-mails were sent to the Regional Office before the Complaint was issued in case 16-CA-27543.

- 10. The Employer never had any legal obligation to furnish any requested information and any documentary information requested does not exist. Therefore, there are no facts, let alone any genuine issue as to any material fact that they do exist. The Employer can not give something it does not have and it also can not obviously delay giving something it does not have. Further, the information for which the Union seeks is within the full knowledge of the Union and there is no other information that exists.
- 11. As early as May 7, 2010 and before the May 11, 2010 request, the Union was told by email that "8. N/A done by system assignment not through e-mail or other written communications." Thus, no such document exists now or before or after May 11, 2010 and the Union and the Regional Director knew this. The Union, on December 1, 2010, acknowledges this fact and was again told on December 20, 2010 that none exists.
- 12. That regarding how the Employer assigns loads, the Union designed, made recommendations and its proposals were adopted by the Employer which became the system of assignments. Likewise, here there is no genuine issue as to any material fact that the Union knew the system assignment and, therefore, any such request is clearly irrelevant.

- 13. Further, there are no facts to support the Union's request for any information and General Counsel will not be able to establish a *prima facie* case in that General Counsel will not be able to prove "either (1.) that the Union demonstrated relevance of the non-unit information or (2.) that the relevance of no information should have been apparent to the Respondent under circumstances." (See Disneyland Park, 350 NLRB 1256, 1258 (2007).
- 14. The underlying grievance for which information is requested provides "Nature of Grievance: The Employer is not placing all available loads on the dispatch board" and it involves subcontracting allegations. Nothing about the May 11, 2010 request is presumptively relevant. See Disneyland Park, 350 NLRB 1256, 1258 (2007).
- 15. The Collective Bargaining Agreement (CBA) and, specifically, a "Letter of Agreement" between the Employer and the Union, gives the Employer the unilateral and unqualified right to assign work and it provides:

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011.

Agreed to this 29th day of September, 2008.

- 16. The Union has not and can not provide any violation for none could exist under the above language. However, the Employer has requested that the Union tell it when, where, who, what and how many times there was a contract violation or why the request for information is relevant, and the Union, by Boysen Anderson, has refused to identify any incidents and sometimes stating in response to the Employer's request, "Enough of this bullshit" and "...don't question what I believe." Another response from the Union and Boysen Anderson was merely, "Bullshit you WILL abide by the contract" without any explanation or clarification of its position. The Employer has continually told the Union that all loads were placed on the dispatch board or kiosk; however, the Union has failed to explain its position and has not provided objective evidence of relevancy. Absent such a showing, the Employer has no obligation to provide anything. See Disneyland at page 1258.
- 17. Again, there are no facts in dispute here for this is based on the CBA and documents and the attached affidavits. *Disneyland* at page 1258 makes it clear that the Union's CBA claim or violation has zero facts to create a dispute and, based on *Disneyland*, there is no presumption of relevancy and without any facts there can not be a finding of relevancy and, therefore, the Employer is entitled to a dismissal of the Complaint as a matter of law.

Wherefore, the Employer requests the Board issue an Order transferring Case No. 16-CA-27543 and Order to Show Cause why Employer's Request for Summary Judgment should not be granted and, ultimately, that the Board issue and Order granting the Employer's Motion

for Summary Judgment and dismiss the Complaint in 16-CA-27543 and any other relief that is just and equitable.

DATED at Milwaukee, Wisconsin, this 4th day of February, 2011.

Thomas P. Krukowski

WI State Bar No. 01013222

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ATTORNEY FOR THE EMPLOYER

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

IRONTIGER LOGISTICS, INC.

and

Case 16-CA-27543

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case 16-CB-8084

IRONTIGER LOGISTICS, INC.

BRIEF IN SUPPORT OF IRONTIGER LOGISTICS, INC.'S
MOTION FOR SUMMARY JUDGMENT FILED PURSUANT TO
SECTION 102.24 OF THE RULES AND REGULATIONS OF
THE NATIONAL LABOR RELATIONS BOARD AND
MOTION TO TRANSFER AND SEVER THE CASES AND CONTINUE
CASE 16-CA-27543 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Submitted this 4th day of February, 2011

Submitted by:

Thomas P. Krukowski, Esq. WI State Bar No. 01013222 KRUKOWSKI & COSTELLO, S.C. 7111 W. Edgerton Avenue Milwaukee, WI 53220 414-423-1330

ATTORNEY FOR THE EMPLOYER

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II.	THE UNION HAS NO FACTS TO SUPPORT ITS UNDERLYING GRIEVANCE AND NO EVIDENCE THAT THE REQUESTED INFORMATION IS RELEVANT. ILLUMINATING THIS FAILURE, AND THE FRIVOLITY OF ITS REQUEST, THE UNION CHANGED ITS POSITION, MOST RECENTLY ON DECEMBER 9, 2010. THE UNION'S "REFORMULATED" INQUIRY FURTHER ILLUSTRATES THAT THERE IS NO DISPUTED FACT TO SUPPORT THE BASIS FOR AN UNFAIR LABOR PRACTICE
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STATEMENT OF ISSUE

Was the International Association of Machinists' (IAM or Union) request for information relevant when the Union did not have any evidence of a violation of a Collective Bargaining Agreement (CBA) or when the Union only made a generalized conclusionary statement or request and openly refused to present objective evidence that illustrates, with any degree of precision that its request is relevant?

SUMMARY OF ARGUMENT

The Union's grievance claims that, "The Employer is not placing all available loads on the dispatch board." However, the CBA provides that, "... loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers other than IronTiger Logistics. .." This unqualified language trumps any possible contract violation. The CBA completely and unequivocally contradicts the Union's claim. It's that simple. At no time has the Union submitted any evidence of the contract violation after numerous requests by the Employer; nor is it possible! There are no facts in dispute here! Each of these provisions and other facts will be discussed in detail below.

IronTiger Logistics, Inc. (IronTiger or Employer) never had an obligation to furnish any information. The Union's requests were never made relevant because it only made a conclusionary allegation without any supporting arguments or, more importantly, any facts. Throughout this entire time the Union failed to provide objective evidence of a contract violation and failed to explain its request with any degree of precision. The Union has no facts to support its underlying grievance and no evidence that the requested information is relevant. Illuminating this failure, and the frivolity of its request, the Union changed its position, most recently on

December 9, 2010. The Union's "reformulated" inquiry further illustrates that there is no disputed fact to support the basis for a finding of an unfair labor practice.

The IAM's alleged premise is there is a violation of the CBA; so it says. Secondly, the Union says they need information to properly administer the CBA based on its claim that the CBA has been violated.

What makes this case appropriate for summary judgment is that there is no evidence of a CBA violation and, logically, if there is no evidence of a contract violation there is no obligation to provide any information. Stated another way, for the Union's request to be relevant and create an obligation for the Employer, it must establish or prove the predicate of a contract violation or at least some logical explanation of a contract violation. The Union must prove its request for information is relevant. The Union must prove that the information requested has a tendency to make it more probably that the Employer's action violated the contract. The record here is devoid of any evidence of a contract violation and it follows that there is no obligation to furnish any information.

Therefore, there are two questions:

- 1. Is the request for information of consequence to this case?
- 2. Does that which is requested tend, or make it more probable, to prove any facts of a contract violation?

Without a contract violation both questions are answered in the negative.¹ The CBA itself, when reviewed below, will make it clear that the Employer had the unilateral right to assign loads without any qualifiers and that no contract violation can or could occur. Further, a review of the

¹ The Federal rules of Evidence 401 and 401 have codified these concepts: RULE 401. DEFINITION OF "RELEVANT EVIDENCE." "Relevant evidence" means evidenced having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. RULE 402. RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

grievance, the entire CBA, the Union's refusal or inability to articulate any contract violation or any objective evidence of relevancy, makes this case appropriate for which summary judgment should be granted. Further, without a genuine issue of a material fact the request for summary judgment should be granted.

STANDARD FOR RULING ON MOTION FOR SUMMARY JUDGMENT

This Motion is filed pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board. Further, Rule 56(c) of the Federal Rules of Civil Procedure (FRCP) provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Also see Lake Charles Memorial Hospital, 250 NLRB 1330 (1979); and Manville Forest Products Corporation, 269 NLRB 390 (1984), and U.S. Supreme Court decisions interpreting Rule 56. According to the U.S. Supreme Court in Celotex v. Catrett, 477 U.S. 317 (1986), FED.R.CIV.P. 56(c):

mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof.

<u>Id</u>. At 322-23. The burden then shifts to the non-moving party, which must "go beyond the pleadings" and by affidavits "or by the 'depositions, answers to interrogatories and admissions on file' designate 'specific facts showing that there is a genuine issue for trial." <u>Id</u> at 324. The

"mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby Inc.* 477 U.S. 242, 247-48 (1986) (emphasis omitted). "A metaphysical doubt as to the material facts" is insufficient to defeat a motion for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). When the record taken as a whole could not lead a rational tier of fact to find for the nonmoving party, there is not a genuine issue for trial. *Matsushita*, 475 U.S. at 587.

STATEMENT OF FACTS

IronTiger Logistics, Inc. is a company that transports trucks to a location for its customer, TruckMovers.com, Inc. (TruckMovers). In turn, TruckMovers' customers are Volvo/Mack, Inc. and Navistar, Inc. IronTiger has two groups of union employees, one that sets up the truck for transportation as yard employees and the second group as drivers. There are four terminals that operate separately under the same Master CBA with the International Association of Machinists (IAM or Union). Those locations are:

- 1. Dublin, Virginia
- 2. Macungie, Pennsylvania
- 3. Springfield, Ohio
- 4. Garland, Texas

Only the drivers are involved in this dispute between the Employer and the IAM. There are three people involved in this dispute: Boysen Anderson, the International Representative for the IAM, Tom Duvall, the President of IronTiger, and Tom Jones, the outside labor and employment attorney for IronTiger. All three individuals are involved in the negotiation of the CBA and the handling of grievances under the CBA. (See Affidavit of Tom Jones, paragraph 1, attached.).

All four units of the IAM were voluntarily recognized by the Employer based on a card check without an election. The CBA was first negotiated at the first terminal, Dublin, Virginia, and eventually applied to all four terminals. The Employer and the Union agreed to a dispatch system which utilized a kiosk as its dispatch board. Boysen Anderson was directly involved in negotiating this system, which he asked to be made part of a "Letter of Agreement" and as the new terminals became operable and part of IronTiger that "Letter of Agreement" then applied and eventually it applied to all terminals. (See Affidavit of Tom Jones, paragraph 2, attached.).

TruckMovers has the business contracts with Volvo/Mack, Inc. and Navistar, Inc. Said Agreements limit the number of loads that TruckMovers, Inc. can give to any one carrier, including IronTiger. Boysen Anderson knew all of these restrictions and it is why the parties negotiated the "Letter of Agreement" as well as its application to the four terminals. Therefore, TruckMovers gets the assignment from Volvo/Mack and Navistar and, in turn, assigns the work to carriers, IronTiger included. TruckMovers does not have any labor contract with any union and is non-union and is located in Kansas City, MO. (See Affidavit of Tom Jones, paragraph 4, attached.).

TruckMovers assigned work to IronTiger. Therefore, IronTiger's customer is TruckMovers. For example, on any given day, the terminal manager at one of the four terminals calls up TruckMovers in Kansas City, MO and tells them he has 10 drivers for dispatch, however, it may be more or less. The dispatcher then electronically posts 10 loads on the kiosk and the terminal manager dispatches the IAM drivers at that location. This same system of assignment is applied uniformly at each of the above four terminals and has since the opening of each of the terminals. (*See* Affidavit of Tom Jones, paragraph 5, attached.).

The underlying grievance giving rise to the Union's request for information is dated March 29, 2010 and it provides "Nature of Grievance: The Employer is not placing all available loads on the dispatch board." (See Exhibit 3 attached to Tom Jones' affidavit, paragraph 8.). The Employer responded on April 5, 2010 in part stating, ". . . that the Company is in compliance with the . . . Collective Bargaining Agreement and . . . It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the . . . CBA." (See Exhibit 6 attached to Tom Jones' affidavit, paragraph 9.). Prior to filing this grievance, the Union and the Employer communicated regarding the underlying potential issues involving a CBA dispute.

March 16, 2010 E-mail from Boysen Anderson to Tom Duvall 8:24 am

Tom—once again the company is not complying with the dispatch language in the CBA. Thus the final warning notice from the IAM. So that we are clear ALL AVAILABLE LOADS ARE TO BE PLACED ON THE BOARD FOR DISPATCH. We have am [sic] Agreement and the company will comply.

Boysen

March 16, 2010 E-mail from Tom Duvall to Boysen Anderson 10:54 am

All available IronTiger loads ARE placed on the board for dispatch. If you believe that they are not, please give me some specifics so that I can investigate.

Tom

March 16, 2010 E-mail from Boysen Anderson to Tom Duvall 10:27 am

Tom—don't question me on what I believe; here are the facts, one driver 1 load—two drivers 2 loads—six drivers 6 loads. Enough of the bullshit.

Boysen

March 29, 2010 E-mail from Boysen Anderson to Tom Duvall 10:04 am

Tom—attached you will find a class grievance on the continuing contract violations. Also, this shall serve as the notice to cure the contract provisions breach outlined in the attached grievance, if the Company ignores this notice the Union will proceed on this grievance under Article 20, Section 1.

Boysen D. Anderson

April 5, 2010 E-mail from Tom Duvall to Boysen Anderson 11:33 am

Boysen,

The Company is in receipt of your class action grievance alleging violations of Article 6-Master Dispatch Procedure and Article 7-Return Travel.

The Company respectfully disagrees with your allegations and states that the Company is in compliance with the provisions of Article 6-Master Dispatch Procedures as well as the provisions of Article 7-Return Travel.

Further, concerning your allegations regarding Article 20, Section 1, the Company denies that it has intentionally ignored any of the provisions of the National Master Agreement.

It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the aforementioned Articles. If we are not able to agree then the matter should be submitted to the grievance procedure for determination as set forth and required by Article 20, Section 1.

Regards,

Tom

April 5, 2010 E-mail from Boysen Anderson to Tom Duvall 4:08 pm

Tom,

I am responding to you e-mail excepts below.

Your e-mail misstates several facts and contrary to your contention and claim the Company are not violating the provisions the in the Union Grievance Report. This is to advise you that the Union rejects your contention and claim. The Union repeatedly warned you of these violations and breach also the Union met with you several time on these issues. You choose to intentionally ignore the Agreement. In short, the Union believes another meeting on these issues will be non productive and will proceed with it's course of actions to correct the contract breach.

Boysen D. Anderson

(See Exhibits 3, 4, 5 and 6, which are true and accurate copies of the e-mails listed above, and are attached to Tom Jones' affidavit, paragraph 8.). On April 12, 2010 the Union requested information, more specifically, eight questions, and on May 7, 2010 the Employer responded to the eight questions. (See Exhibit 7 attached to Tom Jones' affidavit, paragraph 10, which answers the questions and, on page 31, lists the information requested by the Union.). On May 11, 2010 the Union sent a second request for information. The Union filed its first unfair labor practice (ULP) charge in 16-CA-27543 on July 15, 2010 and claimed a violation of Section 8(a)(5) of the National Labor Relations Act (NLRA) for failure to provide the requested information on April 12, 2010 and May 11, 2010. (See Exhibit 8 attached to Tom Jones' affidavit, paragraph 11.). On September 27, 2010 the Regional Director, Martha Kinard, approved the Union's withdrawal of any allegation regarding the April 12, 2010 request but stated she would continue the investigation of the information request dated May 11, 2010 and resubmitted to the Employer on July 30, 2010. (See Exhibit 9 attached to Tom Jones' affidavit, paragraph 12.). On the same date, September 27, 2010, the Employer sent an e-mail to the Union and the Regional Director stating, among other things, that the information sought was irrelevant and why the information requested was irrelevant. (See Exhibit 10, attached to Tom Jones' affidavit, paragraph 13.). On October 12, 2010, the Union responded and, for the first time, changed its position. Now, unlike any other request, states that "... the Company's history of taking loads off the IronTiger Board and giving these loads to TruckMovers' drivers makes the information requested by the Union relevant to process such grievances. .." (See Exhibit 11, attached to Tom Jones' affidavit, paragraph 14.). The initial grievance states failure to "place all available loads on the dispatch board" and now, or at least in October of 2010, it challenges the removal of loads from the board.

On October 13, 2010, the Employer responded to the Union's position.

Boysen,

I am responding to your e-mail dated October 12, 2010. You state, "... the Company's history of taking loads off the IronTiger board and giving these loads to Truckmovers' drivers makes the information requested by the Union relevant to process such grievances." We are not aware of taking loads off IronTiger's drivers kiosk and giving a load to a Truckmovers driver or any other driver and any other contract violation. If you believe we removed loads from the IronTiger's board please provide me with the specifics of your claim so that we can investigate and evaluate your statement of the Company's history of making these changes. Please tell me when, where, what loads were removed, who was affected and how many times this happened and I will be happy to investigate your claim or claims.

Regarding the labor contract, it has no qualifiers and there is no contract violation. Are you sure of your position? If you do not have any evidence of a contract violation, why did you file the grievance? Are you unsure of your position and is that why you are seeking information at this time because you do not know or have information of a contract violation? Do you need to determine if the grievance has merit?

That all being said, we should still meet, as the Company has previously requested, to discuss your grievance and your request for information. We believe besides the request seeking irrelevant information, your request is ambiguous, overbroad and burdensome and by meeting we hope we can clarify your request and possibly come to some arrangement that can be mutually satisfactory.

Give me a call so that we can meet.

Tom Jones

(See Exhibit 12, attached to Tom Jones' affidavit, paragraph 15.).

On October 25, 2010, the Employer raised this inconsistency and stated:

Boysen:

Again I want to set the record straight; I am not aware of any contract violations and I do not have amnesia. Your statement in your October 12, 2010 e-mail and the underlying grievance are inconsistent. The grievance refers to all loads and the later position states the removal of loads—which is it? And again you can short circuit this entire matter if you tell us of any contract violations. We are again asking for this information so we can process your grievance. If we made a mistake we can rectify those issues quickly and make whatever payment is necessary. Further, your request for information is irrelevant to your grievance and, as important, can't we just meet to discuss the issues and if we can not immediately resolve your issues, which we believe we can, at least we can understand your request, which is also ambiguous, overly broad and an unnecessary burden. The request for information is, at best, confusing. By meeting we can clarify your request and come to an arrangement that can be mutually satisfactory.

Again, I am asking you to give me a call so we can meet. If you don't want to meet regarding this matter, please advise in writing and I will quit asking.

Tom Jones

(See Exhibit 13, attached to Tom Jones' affidavit, paragraph 16.).

On December 1, 2010, the Union filed its first Amended Charge against the Employer alleging that the Employer delayed the providing of information which it believes relevant. On December 7, 2010, the Employer requested a meeting and again stated the requested information is irrelevant. (See Exhibit 4, attached to Tom Jones' affidavit, paragraph 17.).

On December 9, 2010, or eight days after the Union's Amended Charge, the Union wrote to the Employer and stated:

Tom - in response to your email of December 7th, let me try to reformulate my information request to address your concerns.

1. On April 12th, I wrote to you and requested "all e-mails, transcripts, faxes, telecommunications and other documentation to support why . . . units were dispatched to Truckmovers drivers." (Request #4)

You responded on May 7th by stating: "N/A. Done by system assignment not through email or other written communication."

What is the "system assignment" you are referring to? How does this "system assignment" distinguish between IronTiger and any other entity (such as TruckMovers) in determining the assignment of dispatches?

2. In what form does IronTiger receive communications from its customers regarding units to be transported? Please provide copies of such communications for all unit orders during the past six months. If the response to this request would be unduly burdensome, please estimate the volume of the response, and we can discuss how the request may be modified so as to lessen or eliminate the burdensome nature of your response.

Boysen D Anderson

(See Exhibit 15, attached to Tom Jones' affidavit, paragraph 18.). The Employer responded to the Union's "reformulated" request on December 20, 2010 and it is the last e-mail or communication between the parties or the NLRB Regional Office.

Boysen,

I am responding to your December 9, 2010 e-mail regarding your request for information. Let me say again that the company has complied with the CBA and your quote from it, "all available loads will [have] be[en] placed on one board in the order of importance of delivery." This practice has been done at all four of our terminals in the same manner and has complied with the CBA. Are you aware of any incident this has not happened in the entire time each of any of the four terminals have been open except the one time or incident in March 2009, which was satisfactorily resolved? Further, you changed your position on your request; first it was all loads and then it was removed loads that you had to clarify recently. Now your most recent e-mail says you are going to again make a change and "try to reformulate my information request."

Your request for information is confusing and now you limit your request to two concerns. You want to know:

- 1. What is the "system assignment" you are referring to? How does this system assignment "distinguish between IronTiger" and any other entity (such as TruckMovers) in determining the assignment of dispatches?
- 2. In what form does IronTiger receive communication from its customers regarding units to be transported? Provide copies of such communications for all unit orders?

Boysen, you know exactly how loads get on the kiosk because we have had that discussion with you numerous times. For examples, as early as our first negotiated CBA, we negotiated this procedure with you and it resulted in the Letter of Agreement (LOA) because of Volvo/Mack's restrictions placed on TruckMovers. You understood this restriction and it was your request that the LOA not be put in the CBA but rather made a LOA regarding the kiosk and the procedure because of your concern for AutoTruck and others not seeing it in the contract. Further, you did not want all loads on the kiosk; you just wanted IronTiger loads on the kiosk.

Again, the LOA was your idea and it was negotiated at your request. Further, before we opened up the additional terminals Tom Duvall and I met with you in Ft. Lauderdale, FL on December 16, 2009. The purpose of the meeting was to inform you that TruckMovers had been awarded the Navistar Contracts in Springfield, Ohio and Garland, Texas.

You were told that Navistar was even more strict in the requirements than Volvo/Mack, regarding the maximum percentage of loads/trucks that could be assigned by TruckMovers, Inc. to any one particular carrier including IronTiger. You were told and you understood that if TruckMovers exceeded this requirement it would be considered a material breach of the contract with Navistar.

You were told that TruckMovers could initially assign to IronTiger up to 75% of the loads without repercussion from Navistar. TruckMovers would try this and see how it worked out. You said you understood and agreed and you specifically stated that this issue had already been addressed in the attached Letter of Agreement to the CBA and that IronTiger and the Union had agreed to regarding loads appearing on the IronTiger drivers kiosk.

You and the Company then discussed the issues relating to the Union obtaining a majority of the signed Authorization Cards and subsequent recognition of the IAM by IronTiger if, in fact, the IAM obtained a majority of such signed Authorization Cards.

You were told and you knew that IronTiger has no contract with Volvo/Mack or Navistar and the contracts were with TruckMovers.

Boysen, review your October 12, 2010 e-mail to me. While your percentages are wrong and it was not at least, but up to a percentage and not to exceed that percentage of loads. Your e-mail concedes Truckmovers has the right to have loads moved by other carriers than IronTiger. That's why the LOA was negotiated and why we agreed as early as December 16, 2009 that for the same exact reason it applies to all terminals. You have always known that each terminal has been run the same way!

Further, using your October 12, 2010 e-mail and its admissions if other carriers can be used then other carriers were used and used at all the terminals. See Tom Duvall's 30 page e-mail to you listing TruckMovers and IronTiger units for all four terminals. It is exactly the same procedure and unit description for units at each of the four terminals and it has always been the same.

Also see your November 29, 2010 e-mail. You get it but your e-mail does not include all of the facts you are aware of. Again, as you know, IronTiger does not control Volvo/Mack and Navistar work—TruckMovers does! IronTiger has not subcontracted any loads and it has not given any work to Truckmovers. The opposite is true.

Now, to answer your questions, that you already know the answers to:

- 1. The system assignment is not a written process as I told you before. Kansas City merely gets a call from each terminal In Garland, as all other terminals, for manager (TM). example, the TM calls and tells Kansas City that there will be 10 IronTiger drivers for dispatch. This is a verbal instruction. Kansas City posts 10 runs for IronTiger drivers on the kiosk in the importance of delivery and then 10 IronTiger drivers are dispatched. That's it! Nothing is transferred by e-mail, etc. There is no distinction necessary for Truckmovers or any other carrier because only IronTiger work is posted on the kiosk. That is what you wanted! You should recall this entire procedure because this entire system was negotiated and designed by the Company and Union. Again, the way it works were even your suggestions and recommendations.
- IronTiger only receives the posted information on the kiosk nothing else! There is nothing else other than this posted information which is generated by the computer and is a mental process of merely sending sufficient loads for the

number of available IronTiger drivers in the order of each load and the importance of delivery. Again, there is no paper, no e-mail, no documents. From the kiosk the IronTiger drivers are then dispatched pursuant to the CBA. It's all telephonic and sent to the computer or the kiosk.

Again, if we had met as the Company suggested as early as April 5, 2010, we could have saved you a lot of time discussing and recalling all of the facts. Boysen, while I expect you will respond, please take a minute and review the facts and your notes of our negotiations of the LOA and other meetings, such as the December 16, 2009 meeting. Thanks,

Tom

(See Exhibit 16, attached to Tom Jones' affidavit, paragraph 19.). This was given to the Union and the Regional Director before the Complaint was issued on December 22, 2010.

ARGUMENTS

I. THE EMPLOYER NEVER HAD AN OBLIGATION TO FURNISH ANY INFORMATION. THE IAM'S REQUESTS WERE NEVER RELEVANT **BECAUSE** IT ONLY **MADE** MADE **CONCLUSIONARY ALLEGATION WITHOUT** SUPPORTING ARGUMENTS OR, MORE IMPORTANTLY, ANY FACTS. THROUGHOUT THIS ENTIRE TIME THE UNION HAS FAILED TO PROVIDE **OBJECTIVE EVIDENCE** CONTRACT VIOLATION AND HAS FAILED TO EXPLAIN ITS REQUEST WITH ANY DEGREE OF PRECISION.

Here, too, the Union's grievance claims that, "The Employer is not placing all available loads on the dispatch board." However, the CBA provides that, ". . . loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers other than IronTiger Logistics. . ." This unqualified language trumps any possible contract violation. The CBA completely and unequivocally contradicts the Union's claim. It's that simple. At no time has the Union submitted any evidence of the contract violation after numerous requests by

the Employer; nor is it possible! There are <u>no</u> facts in dispute here! Each of these provisions and other facts will be discussed in detail below.

Recognizing an employer's obligation to provide relevant information that the union needs for the proper performance of its duties, *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956), a union when seeking information that is not presumptively relevant, the burden is on the union to demonstrate the relevance. *See Disneyland Park*, 350 NLRB 1256 (2007). The union, the IAM, is seeking information regarding subcontracting or, stated another way, the Union employees were not given loads that another carrier did get. The underlying grievance states, "The Employer is not placing all available loads on the dispatch board. . ." and, presumably, giving loads to another carrier, a non-union carrier. We state presumably because it is unclear, even now, what the Union is saying because it refuses to advise the Employer of any contract violations. Not one! Likewise, the Union has mysteriously continued to merely say the Employer is violating the CBA without more!

The General Counsel in *Disneyland* stipulated to a legal principle or premise before the Administrative Law Judge (ALJ) that has an application here:

As the General Counsel concedes, information about subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, does not constitute presumptively relevant information. Excel Rehabilitation & Health Center, 336 NLRB No. 10 fn. 1 (2001) (not reported in Board volumes); Richmond Health Care, 332 NLRB 1304 (2000); Detroit Auto Auction, Inc., 324 NLRB No. 143 (1997); (not reported in Board volumes); Associated Ready Mixed Concrete, 318 NLRB 318 (1995). Therefore, "a union seeking such information must demonstrate its relevance." Excel Rehabilitation & Health Center, supra at fn. 1, and cases cited therein. (See Disneyland at page 1265).

Not only was this premise agreed upon, it was made part of the Board's holding:

**5 Information about subcontracting agreements, even those relating to bargaining unit employees' terms and conditions of employment, is not presumptively relevant. Therefore, a union seeking such information must

demonstrate its relevance, *Richmond Health Care*, 332 NLRB 1304, 1305 fn. 1 (2000). (See Disneyland at page 1258).

This is easy to understand. It makes sense that bargaining unit information is not presumptively relevant because what the bargaining unit employees are or have been doing has nothing to do with a violation of a subcontracting issue. Again, why is what bargaining unit employees do significant? It's not. We assume they are doing bargaining unit work—so what! How does it shed light on any potential subcontracting issues (and vice versa)? What bargaining unit employees do is not even remotely tangential to whether or not the subcontracting provision has been violated. Again, they are doing bargaining unit work.

Therefore, the IAM needs to tell us more because, as stated in *Disneyland*:

To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information [FN5] or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances. See *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018-1019 (1979), enfd. in relevant part 615 F.2d 1100 (8th Cir. 1980). Absent such a showing, the employer is not obligated to provide the requested information.

FN5. The union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information. *Island Creek Coal*, 292 NLRB 480, 490 fn. 19 (1989). See also *Schrock Cabinet Co.*, 339 NLRB 182 fn. 6 (2003).

As stated, the Union has only made conclusory arguments. Now, compare the language in *Disneyland* with IronTiger's contract language:

DISNEYLAND

During the terms of the Agreement, the Employer agrees that it will not subcontract work for the purpose of evading its obligations under this Agreement. However, it is understood

IRONTIGER

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics

and agreed that the Employer shall have the right to subcontract when: (a) where such work is required to be sublet to maintain a legitimate manufacturers' warranty: or (b) where subcontracting of work will not result in the termination or layoff, or the failure to recall from layoff, any permanent employee qualified and classified to do the work; or (c) where the employees of the Employer lack the skills or qualifications or the Employer not possess the requisite does equipment for carrying out the work; or (d) where because of size, complexity or time of completion it is impractical or uneconomical to do the work with Employer equipment and personnel [FN4]

and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011.

The Union cannot argue its request is relevant within the defining language of the CBA. In *Disneyland*, the language prohibited subcontracting unlike IronTiger's CBA. In *Disneyland*, it provided language that the employer could not evade the contract; language not in IronTiger's CBA; also, in *Disneyland's* CBA, it could subcontract under four qualifying contexts; again, IronTiger's CBA has no qualifiers. In *Disneyland*, the Board said, as here, that information requested was not relevant and is not apparent from the language or surrounding circumstances. However, in *Disneyland*, at least the union tried to explain why it needed the information. The Board, however, found "... these explanations insufficient under the circumstances to explain the relevance of the requested subcontract information" at page 1258. The Board went on to say:

In order to show the relevancy of an information request, a union must do more than cite a provision of the collective-bargaining agreement. It must demonstrate that the contract provision is related to the matter about which information is sought. . . . Here, it has not been shown that the union had a reasonable believe supported by objective evidence that the information sought was relevant.

Therefore, we find that the union failed to meet its burden. (See Disneyland at page 1258.)²

Now let's review the Union's evidence, here in its attempt to explain or clarify why its request is irrelevant and is merely a generalization without any facts to support the claim that could trigger the employer's obligation to furnish information (these e-mails are outlined in detail in the Statement of Facts):

- 1. The IAM's grievance. It merely says, "The employer is not placing all available loads on the dispatch board." March 29, 1010. (See Exhibit 3, attached to Tom Jones' affidavit, paragraph 8.).
- 2. Prior to the grievance Boysen's e-mail to Tom Duvall on March 16, 2010, stated, "All loads available loads are to be placed on the Board for dispatch." (See Exhibit 4, attached to Tom Jones' affidavit, paragraph 8.).
- 3. On March 16, 2010 Tom Duvall wrote back to Boysen and said, "All available IronTiger loads ARE placed on the board for dispatch. If you believe that they are not, please give me some specifics so that I can investigate." (See Exhibit 4, attached to Tom Jones' affidavit, paragraph 8.).
- 4. On the same day, March 16, 2010, Boysen explains his position to Tom Duvall: "Tom—don't question me on what I believe, here are the facts, one driver 1 load,—two drivers 2 loads—six drivers 6 loads. Enough of this bullshit." (See Exhibit 4, attached to Tom Jones' affidavit, paragraph 8.).
- 5. Tom Duvall, again on March 16, 2010, in an e-mail to Boysen, stated that we don't set the priorities, our client does. (See Exhibit 4, attached to Tom Jones' affidavit, paragraph's.).

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² Recent Board law affirms that there is a need for objective evidence which must be presented with the request for information for it to be relevant in subcontracting cases after *Disneyland* and stating that the failure to do so will result in a finding of no obligation to furnish anything. *See A-1 Door and Building Solutions*, 356 NLRB No. 76 (Jan. 11, 2011: Chairman Liebman, Members Becker and Hayes) in adopting the ALJ analysis; *Castle Hill Health Care Center*, 355 NLRB No. 196 (Sept. 28, 2010: same panel) adopting the ALJ analysis; *Chrysler, LLC and Local 412, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO*, 354 NLRB No. 128 (Aug. 5, 2010: Chairman Liebman, Members Schaumber and Pearce); and *Racetrack Food Services, Inc.*, 353 NLRB 687 (Sept. 30, 2010: Chairman Liebman, Members Becker and Hayes).

- 6. Boysen, on March 16, 2010, again responds, "Bullshit you WILL abide by the contract." (See Exhibit 4, attached to Tom Jones' affidavit, paragraph 8.).
- 7. The grievance is filed (See no 1. above). The company's response is from Tom Duvall on April 5, 2010 that there was no contract violation and requested a meeting. (See Exhibit 6, attached to Tom Jones' affidavit, paragraph 8.).

That's the Union's explanation. Compare these facts to *Disneyland*'s facts. Not only does the contract entirely trump Boysen's claim, he has utterly failed to explain what provision or what facts support a claim and why his request is relevant. It's still a mystery! Boysen's generalization and his only emphasis on the word "BULLSHIT" does not come close to meeting his burden required by *Disneyland*.

The Union has failed to respond to the Employer's inquiries requesting what the facts are and why its request is relevant. The Company requested the IAM, specifically, Boysen Anderson, to:

- 1. Tell the Company what contract violations exist to support his grievance, and the facts of <u>any</u> violation;
- 2. To explain why his previous information request is relevant, particularly when the Union has refused to tell the Company what the contract violation is, and, if it becomes necessary, to understand how the Company and the Union can come up with a process to resolve or settle the grievance or satisfy the IAM's inquiry;
- 3. To meet to resolve the underlying grievance as in the past; if the Union has specific facts of a contract violation, the Company is willing to make the proper compensation; and
- 4. To meet to discuss these issues generally.

(See Exhibit 17, the November 24, 2010 e-mail from Tom Jones to Boysen Anderson, attached to Tom Jones' affidavit, paragraph 20.).

The Company previously made a request for a meeting on October 25, 2010. (See Exhibit 13, attached to Tom Jones' affidavit, paragraph 16.). Similarly, he refused the Employer's request to meet on September 27, 2010, and he refused the Employer's request early on, shortly after he filed the grievance on April 5, 2010. (See Exhibits 5 and 6, attached to Tom Jones' affidavit, paragraph 8.). Therefore, from April 2010 to now, the Employer has made at least five (5) requests to meet, and Boysen Anderson has refused each one. Why? Answer: He has no facts to support a violation of the CBA nor can he establish relevancy!

Even though he has a statutory obligation to tell the Company what he has not done so.³ Without information from Boysen Anderson and the Union, the Company is unable to:

- 1. Know what contract provision has been violated;
- 2. Respond to the Union grievance without facts of a contract violation;
- 3. Understand the Union request for information without facts of a contract violation; and
- 4. Settle the grievance without facts of a contract violation.

How could the Employer, or the NLRB for that matter, make a decision regarding relevancy if the Union refuses to tell the Employer what the contract violation is, let alone provide any facts to support a violation of the contract? Preposterous. The IAM's and Boysen Anderson's grievance is bogus and so is his request for information. Anderson's answers the Employer's request are instructive. Anderson, in part, stated, "... As to your concerns regarding the merit of the grievance, the last time I checked, the merit [sic]of a grievance is the [sic] wholly

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³ Just as the employer has an obligation to furnish relevant information, so does the Union under § 8(b)(3) of the Act. The obligation is not imposed on the employer alone, the IAM has a similar duty. *Oakland Press*, 233 NLRB 994; aff'd, 598 F.2d 267 (D.C. Cir. 1979). The Board continues to hold that the Union's duty to furnish information under § 8(b)(3) is "commensurate with and parallel to an employer's obligation to furnish [information] to a Union pursuant to § 8(a)(1) and § 8(a)(5) of the Act." See, *Local One-L*, 352 NLRB 906 (2008).

decision of the Union to determine, not the Company . . ." (See Exhibit 19, the October 18, 2010 e-mail from Boysen Anderson to Tom Jones, and attached to Tom Jones' affidavit, paragraph 23.). NOT TRUE! The Union cannot just refuse to tell the Employer what provision was violated and what facts (including when and where) support a contract violation and a request for information.

Why won't he meet? Answer: he does not have a clue of any contract violation and he simply ignores the CBA. Simultaneous, he has <u>no</u> facts; who, what, when, where, why, how and how many times, the contract has been violated because the "Letter of Agreement" trumps any such fiction he could create. Why won't he tell us what his facts are? Answer; again, he has none! According to Boysen Anderson, only he should know what the violation of the contract is. However, *Disneyland*, *supra*, at page 1258 provides:

In order to show the relevance of an information request, a union must do more than cite a provision of the collective bargaining agreement. It must demonstrate that the contract provision is related to the matter about which information is sought, and that the matter is within the union's responsibilities as the collective bargaining representative.

Dismiss the IAM's charge and the Complaint; tell the Union it can not make frivolous requests. The reason the Union has no facts of a CBA violation is because none could exist under the CBA's "Letter of Agreement," which gives the Employer the unilateral right to list loads on the dispatch kiosk. Nothing more could be clearer. While the Union has ignored the "Letter of Agreement" and apparently does not like this provision of the CBA, it is what it is.

II. THE UNION HAS NO FACTS TO SUPPORTS ITS UNDERLYING GRIEVANCE AND NO EVIDENCE THAT THE REQUESTED INFORMATION RELEVANT. **ILLUMINATING** IS FAILURE. THE FRIVOLITY OF ITS REQUEST. AND RECENTLY UNION CHANGED ITS POSITION. MOST THE UNION'S "REFORMULATED" **DECEMBER 9. 2010.** INOUIRY FURTHER ILLUSTRATES THAT THERE DISPUTED FACT TO SUPPORT THE BASIS FOR AN UNFAIR LABOR PRACTICE.

When a party has <u>no</u> evidence, it argues the law and when there is <u>no</u> law to support its position, it just argues. That is exactly what Boysen Anderson has done. Early on, when Anderson was asked to explain his position or give any facts of a contract violation, he said, "Enough of this bullshit and . . . don't question what I believe." Another one of Anderson's responses to a request for facts and no facts forthcoming he merely said, "Bullshit you WILL abide by the contract." Anderson makes this an easy case. Anderson's approach to not questioning what he believes attempts to place himself as an unquestionable mystic requiring everyone else to be clairvoyant. That is not the law and without facts the Employer never had an obligation to provide anything to the Union.

The union has done everything to confuse the underlying issue. The grievance cites Article 6 of the CBA and the grievance and contract simply states that the Company will place all available loads for dispatch. The Union, recognizing this is <u>not</u> a limitation, changes direction by changing its position that the Employer removed loads. Again, recognize that this also means nothing, the Union returns to its earlier position. Then, as late as December 9, 2010, the Union again changes its position and as the union states, it is to "reformulate" its position. This last confiscation is all based on the Union not having any facts to support a violation of the contract or any evidence to support the argument that its request for information is relevant. Time and again the Employer asked for an example of a contract violation and an explanation of not only

the violation but also why the request for information is relevant. To add to the Union's stonewalling is the Union's rejection of the Employer's numerous requests for a meeting. The Union did nothing to support its case even though it has the burden to do so and, instead of meeting in the light of day, it was hiding behind statements like, "Do not question what I [Boysen Anderson] believe."

The December 9, 2010 change in the Union's position, its self-admitted reformulation, is another admission it has no evidence of a contract violation and the Union's last ditch effort to breathe life into its request for information. However, this reformulation does just the opposite. The facts here are fully set forth in the Statement of Facts introduction on page . The Union wants to know two things: 1). What is the system for assignment of drivers and 2). What documents does the Company have regarding assignments. This system was negotiated with Boysen Anderson. The procedure was designed with Boysen Anderson's suggestions, which include that the procedure would be set out in a "Letter of Agreement." Anderson was asked if all loads IronTiger, TruckMovers or others should be placed on the kiosk and Anderson's response was just IronTiger loads. How many loads are assigned to IronTiger is based on a restriction from the customer to TruckMovers. Only some of the loads can be assigned to IronTiger and Anderson and the union knew this and it is why the "Letter of Agreement" was negotiated in the first place. The "Letter of Agreement" discussed above is an unqualified right of the Employer to assign loads to the IronTiger kiosk. The CBA simply provides, "The parties hereto agree that loads not appearing on IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics. . ."

This is the language negotiated by Boysen Anderson—it is the system of assignments.

Other than this language it is undisputable that there is no other written procedure. As stated

earlier, for example, in Garland, Texas, as at all four terminals, the terminal manager calls and tells Kansas City that there will be 10 IronTiger drivers for dispatch (more or less). This is a verbal instruction. Kansas City posts 10 loads for IronTiger drivers on the kiosk and 10 drivers are dispatched. That's it! There is nothing to give to the Union that it does not already have or know.

Secondly, the Union's reformulation seeks documents. The Union admits in its December 1, 2010 request, and states in part:

"You responded on May 7th by stating: N/A, Done by system assignment not through e-mail or other written communication."

Admitting this, the Union answers the Union's own question—there are no documents. The system is all telephonic—again, there is nothing to give the Union and the Union knew that at least as early as May 7, 2010. There are no genuine issues in dispute. The CBA has not been violated and there is no evidence to support Boysen Anderson's personal or his secret belief that the CBA has been violated.

CONCLUSION

We request that the Board transfer this case, 16-CA-17543, sever it from the Consolidated cases, continue the case, seek an Order to Show Cause, and ultimately dismiss the Complaint in Case No. 16-CA-17543. The Motion for Summary Judgment is appropriate because there are no facts in dispute that the Union's request is relevant as has been outlined above. The Employer, here, never did have any obligation to provide anything to the Union. The Union has wholly failed to demonstrate that the information request relates to a violation of the CBA. Failing to establish a violation of a CBA, or invent some articulation of a violation it is not reasonable or possible to assume that the requested information has a tendency to make the

existence of the Employer's decision or action more probable than not that that decision or action was a violation of the CBA. Therefore, the Employer did not commit an unfair labor practice and the Complaint should be dismissed and the summary judgment granted because there is no genuine issue of fact that the CBA had been violated and that the information requested will or can make it more probable that an employer's decision violated the CBA. We respectfully request the dismissal of the Union's unfair labor practice complaint in case 16-CA-27543.

Dated at Milwaukee, Wisconsin, this 4th day of February, 2011.

KRUKOWSKI & COSTELLO, S.C.

Thomas P. Krukowski State Bar No.: 01013222

Thomas P. Kuskowski

7111 West Edgerton Avenue

Milwaukee, WI 53220 Telephone: (414) 423-1330

Facsimile: (414) 423-1694 E-Mail: tpk@kclegal.com

#137151

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

	\mathbb{R}	ON	TIGER	LOGISTIC	S. INC.
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and

Case 16-CA-27543

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

and

Case 16-CB-8084

IRONTIGER LOGISTICS, INC.

AFFIDAVIT OF TOM JONES IN SUPPORT OF IRONTIGER LOGISTICS, INC.'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT FILED PURSUANT TO SECTION 102.24 OF THE RULES AND REGULATIONS OF THE NATIONAL LABOR RELATIONS BOARD AND MOTION TO TRANSFER AND SEVER THE CASES AND CONTINUE CASE 16-CA-27543 BEFORE THE NATIONAL LABOR RELATIONS BOARD

STATE OF TEXAS)
) SS
TARRANT COUNTY)

TOM JONES, being first duly sworn on Oath, hereby states as follows:

1. I am the outside labor and employment attorney for IronTiger Logistics, Inc. (IronTiger or Employer). I can be reached at The Jones Law Firm located at 9915 Cameron Road, Excelsior Springs, MO 64024. My phone number is 816-792-1150. I have been actively involved with IronTiger and its labor relations matters. IronTiger Logistics, Inc. is a company that transports trucks to a location for its customer, TruckMovers.com, Inc. (TruckMovers). My responsibilities include negotiating collective bargaining agreements (CBA) and processing

grievances under the CBA with the International Association of Machinists (IAM or Union). My responsibilities also included the voluntary recognition of the IAM based on a card check without an election. My responsibilities apply to four locations of the Employer: Dublin, Virginia; Macungie, Pennsylvania; Springfield, Ohio; and Garland, Texas. The first CBA was negotiated on September 25, 2008 and applied to the terminal in Dublin, Virginia. It became the Master Agreement. (See Exhibit 1, attached hereto as a true and accurate copy of the Title Page and Articles 6, 7 and 19 of the CBA.). Simultaneous with the bargaining of the Master Agreement, Boysen Anderson, the International Representative for the Union, Tom Duvall, President of IronTiger, and I negotiated a "Letter of Agreement" with the Union. Such "Letter of Agreement" was executed on September 29, 2008. (See Exhibit 2, attached hereto as a true and accurate copy of the "Letter of Agreement.").

- 2. The Employer and the Union agreed to a dispatch system which utilized a kiosk as its dispatch board. Boysen Anderson was directly involved in negotiating this system, which he asked to be made part of the "Letter of Agreement" and as the new terminals became operable and part of IronTiger such "Letter of Agreement" applied to all terminals and all terminals have operated under this system when each one became operable.
- 3. That on or before March 3, 2009, Boysen Anderson, Tom Duvall and I negotiated a CBA at the Macungie, Pennsylvania terminal, and on January 21, 2010, Boysen Anderson, Tom Duvall and I negotiated a CBA at the Garland, Texas and Springfield, Ohio terminals, all of which incorporated the Master Agreement, including the "Letter of Agreement."
- 4. TruckMovers has the business contracts with Volvo/Mack, Inc. and Navistar, Inc. Said Agreements limit the number of loads that TruckMovers can give to any one carrier, including IronTiger. Boysen Anderson knew all of these restrictions and it is why the parties

negotiated the "Letter of Agreement" as well as its application to the four terminals. Therefore, TruckMovers gets the assignment from Volvo/Mack and Navistar and, in turn, assigns the work to carriers, IronTiger included TruckMovers does not have any labor contract with any union and is non-union and is located in Kansas City, MO.

- 5. TruckMovers assigns work to IronTiger. Therefore, IronTiger's customer is TruckMovers. For example, on any given day, the terminal manager at one of the four terminals calls up TruckMovers in Kansas City, Missouri and tells them he has 10 drivers for dispatch, however, it may be more or less. The dispatcher then electronically posts 10 loads on the kiosk and the terminal manager dispatches the IAM drivers at that location. This same system of assignment is applied uniformly at each of the above four terminals and has since the opening of each of the terminals.
- 6. On December 16, 2009, Boysen Anderson, Tom Duvall, and I met in Fort Lauderdale, Florida. The purpose of the meeting was to inform Boysen Anderson that TruckMovers had been awarded the Navistar contract for Garland, Texas and Springfield, Ohio. Boysen Anderson was told that Navistar was even more restrictive in giving loads to IronTiger. Boysen Anderson acknowledged the restriction and stated that the "Letter of Agreement" applied to these additional terminals. (See Exhibit 2, attached hereto as a true and accurate copy of the "Letter of Agreement.").
- 7. The "Letter of Agreement" was negotiated by Boysen Anderson, Tom Duvall and myself and it was necessary because of the restriction of loads that could be given to IronTiger or any other carrier. Boysen Anderson never questioned the need for this "Letter of Agreement." As a matter of fact, during the negotiation of the "Letter of Agreement," Boysen Anderson was asked if he wanted all loads to be placed on the kiosk so as to allow and permit drivers from all

of the companies that would be moving loads for TruckMovers, including IronTiger, to choose loads from the kiosk on a "first-in-first-out" basis and Boysen Anderson was adamant that the kiosk only list available loads that had been assigned to IronTiger. Further, it was Boysen Anderson's request that the system assignment be part of a "Letter of Agreement" and not made a part of Article 19 of the CBA because he did not want competitors like AutoTruck, Inc. or others reading the "Letter of Agreement." The Company, after full and complete negotiations with Boysen Anderson, made changes to the "Letter of Agreement" and it was implemented. Further, the "Letter of Agreement" has been followed at each terminal since the terminal's inception without exception and with full knowledge of Boysen Anderson at each of the four terminals on a daily basis.

- 8. The underlying grievance giving rise to the Union's request for information is dated March 29, 2010 and it provides "Nature of Grievance: The Employer is not placing all available loads on the dispatch board." (See Exhibits 3, 4, 5 and 6, attached hereto as true and accurate copies of the grievance and e-mails exchanged between Boysen Anderson and Tom Duvall.).
- 9. The Employer responded on April 5, 2010, in part stating, "... that the Company is in compliance with the ... Collective Bargaining Agreement and ... It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the ... CBA." (See Exhibit 6, attached hereto as a true and accurate copy of the April 5, 2010 e-mail from Tom Duvall to Boysen Anderson.).
- 10. On April 12, 2010 the Union requested information, more specifically, eight questions, and on May 7, 2010 the Employer responded to the eight questions. (See Exhibit 7,

)

attached hereto as a true and accurate copy of part of the Employer's response that answers the questions and, on page 31, lists the information requested by the Union.).

- 11. The Union filed its first unfair labor practice (ULP) charge in 16-CA-27543 on July 15, 2010 and claimed a violation of Section 8(a)(5) of the National Labor Relations Act (NLRA) for failure to provide the requested information on April 12, 2010 and May 11, 2010. (See Exhibit 8, attached hereto as a true and accurate copy of the ULP charge.).
- 12. On September 27, 2010 the Regional Director, Martha Kinard, approved the Union's withdrawal of any allegation regarding the April 12, 2010 request but stated she would continue the investigation of the information request dated May 11, 2010 and resubmitted to the Employer on July 30, 2010. (See Exhibit 9, attached hereto as a true and accurate copy of the Withdrawal.).
- 13. On the same date, September 27, 2010, the Employer sent an e-mail to the Union and the Regional Director stating, among other things, that the information sought was irrelevant and why the information requested was irrelevant. (See Exhibit 10, attached hereto as a true and accurate copy of the e-mail from the Employer.).
- 14. On October 12, 2010, the Union responded and, for the first time, changed its position. Now, unlike any other request, stated that ". . . the Company's history of taking loads off the IronTiger Board and giving these loads to TruckMovers' drivers makes the information requested by the Union relevant to process such grievances. . ." (See Exhibit 11, attached hereto as a true and accurate copy of Boysen Anderson's e-mail.).
- 15. On October 13, 2010, the Employer responded to the Union's change in position and again requested to meet. (See Exhibit 12, attached hereto as a true and accurate copy of my e-mail to Boysen Anderson.).

- 16. On October 25, 2010, the Employer raised the issue of the Union's inconsistency in an e-mail to Boysen Anderson and stated, in part: "Your statement in your October 12, 2010 e-mail and the underlying grievance are inconsistent. The grievance refers to all loads and the later position states the removal of loads—which is it?" (See Exhibit 13, attached hereto as a true and accurate copy of my e-mail to Boysen Anderson.).
- 17. On December 1, 2010, the Union filed its first Amended Charge against the Employer alleging that the Employer delayed the providing of information which it believes relevant. On December 7, 2010, the Employer requested a meeting and again stated that the information requested is irrelevant. (See Exhibit 14, attached hereto as a true and accurate copy of my e-mail to Boysen Anderson.).
- 18. On December 9, 2010, or eight days after the Union's Amended Charge, Boysen Anderson sent an e-mail to me in which he stated, in part, "Tom in response to your email of December 7th, let me try to reformulate my information request to address your concerns." (See Exhibit 15, attached hereto as a true and accurate copy of the e-mail from Boysen Anderson to me.).
- 19. The Employer responded to the Union's "reformulated" request on December 20, 2010. (See Exhibit 16, attached hereto as a true and accurate copy of the e-mail from me to Boysen Anderson.).
- The Union has failed to respond to the Employer's inquiries requesting what the facts are and why its request is relevant. (See Exhibit 17, attached hereto as a true and accurate copy of the November 24, 2010 e-mail from me to Boysen Anderson.).

21. The Company previously made a request for a meeting on October 25, 2010. (See Exhibit 18, attached hereto as a true and accurate copy of the e-mail from me to Boysen

Anderson.).

22. Boysen Anderson also refused the Employer's request to meet on September 27,

2010, and he refused the Employer's request to meet early on, shortly after he filed the grievance

on April 5, 2010. (See Exhibits 10 and 6, attached hereto as true and accurate copies of e-mails

between me and Boysen Anderson.).

23. Boysen Anderson also continued to refuse to provide information regarding the

merits of his grievance and, in part, stated, "... As to your concerns regarding the merit of the

grievance, the last time I checked, the merit [sic] of a grievance is the [sic] wholly decision of the

Union to determine, not the Company . . ." (See Exhibit 19, attached hereto as a true and

accurate copy of the October 18, 2010 e-mail from Boysen Anderson to me.).

24. This affidavit consists of 24 paragraphs and 7 pages.

I hereby affirm under penalty of perjury under the laws of the United States that the

foregoing is true and correct.

Executed on February #

Subscribed and sworn to before me

this 4th day of February, 2011.

Many Base
Notary Public, [KC MO City, State]
My Commission expires: 62 85 2011

MARY BASE My Commission Expires February 25, 2011 Clay County Commission #07535020

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TENTATIVE AGREEMENT

IRONTIGER LOGISTICS, INC.

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

This Tenatative Agreement confirms agreements reached in contract negotiations by and between IRONTIGER LOGISTICS, INC. and the International Association of Machinists and Aerospace Workers, AFL-CIO.

The parties reserve the right to correct any errors and omissions.



Section 3 Probationary Employees

A probationary employee shall work under the provisions of this Agreement, but shall be remployed only on a ninety (90) day trial basis. During this period, the employee may be terminated without recourse provided, however, that the Employer may not terminate or discipline for the purpose of evading this Agreement or discriminating against Union members. If retained in the employ of the Employer, the employee's seniority shall date back to the employee's date of hire. No fringes except health and welfare will be paid during the probationary period.

ARTICLE 4

MAINTENANCE OF STANDARDS

The Company agrees that the conditions of employment set forth in this Agreement shall be maintained during the life of this Agreement. However, if in the event of tartfl(s), change(s), or other condition(s), etc. changes are necessary to the continuance and/or maintenance of the business, the Parties shall be required to meet and bargain over such changes

ARTICLE 5

SUCCESSOR CLAUSE

This Agreement shall be binding upon the parties hereto, their successors or administrators, executors, and assigns

ARTICLE 6 MASTER DISPATCH PROCEDURE

Section 1. Dispatch Procedure

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The Company and the Union agree that the prompt and efficient dispatch of vehicles is necessary to meet the needs, demands and expectations of the manufacturers. Likewise, the parties agree that a fair dispatch procedure should allow drivers to have equal opportunity to select loads, allow for the collection of paperwork in order to adopt a Monday cutoff for payroll, and offer the opportunity for a more organized system to bandle the administrative needs of the Company and the driver.

- ì Upon delivery, the driver will update his availability through his company issued cell phone.
- JUB BROWERS Only drivers available for dispatch, physically present and have turned all $\sqrt{}$ paperwork in from his prior trip will be allowed to check in for dispatch.

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- Drivers will be dispatched on a first in first out basis. Should two or more IronTiger drivers arrive at the terminal at the same time they will sign into the dispatch system using Company seniority with the most senior signing in first. Seniority is the actual date of hire.
- 4. The driver will then pick a load from the available loads. Available loads may include breakdowns or secondary moves as part of a trip or separate dispatch. The driver must pick a load within 5 minutes after logging into the dispatch kiosk. After 5 minutes, dispatch will continue on to the next driver. If the driver has not picked a load within 30 minutes, he will be assigned a load.
- All available loads will be placed on one board in the order of importance of delivery. Available loads may include breakdowns or secondary moves as part of a trip or as a separate dispatch Old, Hot, or Expedited loads will have priority.
- 6. Pass and Protect will apply as follows. In a circumstance where there are more available drivers than available loads, a driver may pass his opportunity to choose a load on that board provided there are a sufficient number of drivers behind him on the board to insure that all loads on the board are dispatched. A driver who chooses to pass must pick a load after all drivers who have checked in when the pass and protect was applied. A driver may not pass more thun one time, but must choose a load from his next pick or he will be assigned a load.
- Breakdown and secondary moves originating outside of a terminal and not posted on a dispatch kiosk may be assigned to drivers.
- Once a driver picks a load, that load must leave the yard by the end of the day or the load may be dispatched again on the following day. The only exception is when a load may leave later in order to avoid a weekend layover.
- 9 If there are no loads available at the time of check in, then the drivers will be notified in the order that they checked in once loads become available.
- 10. When the company must dispatch on a Saturday or Sunday, the company will notify the drivers that they will be dispatching those days as soon as possible.
- 11. Drivers with lost luggage or tools cannot be dispatched until they have the correct tools to perform their job. Drivers must provide proof from the airlines that their luggage and or tools have been lost. The company will have the option to issue the driver replacement tools or compensate the driver to purchase new tools and continue to dispatch them.

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- Advances will be given at the time of dispatch for the estimated trip expenses. If additional advances are needed during the trip, the driver should call his driver manager for such advances.
- The cut off for paperwork will be Monday. All paperwork must be turned in by Monday (Noon) for pay that week.
 - Traincrs/Trainces-the Company will continue to put loads together for the
 - The dispatch procedure may be changed provided that there is a mutual agreement between the Company and the Union.

Section 2. Time Off

Drivers shall earn time off at the rate of 1 scheduled day off per 2,000 miles driven.

ARTICLE 7 RETURN TRAVEL V

Section 1.

- When return travel is by air, Travel will book the driver on a flight departing within five (5) hours of the driver's requested time, providing that such a flight is scheduled and available. In the event that an available flight is not booked to depart within five (5) hours, the driver shall be cligible for delay time (eight (8) hours in each 24), beginning after the 5th hour, until such departure is scheduled. In the event that the Company elects to book a flight with departure the following day, the driver shall be compensated eight (8) hours. This provision shall not apply in areas where there are limited schedules of flights.
- A driver may request a flight departing the following day, and, if that request is granted. Travel shall book such a flight, but the driver shall not be eligible for delay pay. When such request is made based on the time of delivery and/or the hours available to work the request shall not be denied
- Should the Company enter into any "AirPass" agreements with any airlines, Canadian or United States based, the Drivers will be required to follow those "AirPass" Program Rules and Regulations.
- The Company may, at its discretion, assign a rental car for return trips of 325 miles or less. For return trips over 325 miles, the Company may assign a rental car, however such return will be on a voluntary basis. When return travel is by rental car, the employee will receive twenty-five cents (50.25) per mile. Should more than one

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driver share a rental car, then each employee traveling in the rental car shall receive \$0.35 per mile. If requested, rental cars shall be assigned for return trips up to 500 miles, if available. Drivers shall observe the Company's Program Rules and Procedures governing the use of rental cars.

- The Company may, at its discretion, arrange for a shuttle to return drivers on trips of 325 miles or less. If the Company exercises this option the Company will pay all drivers on such shuttle fifteen (\$0.15) cents per mile. This provision does not apply on shuttle from airport
- In the event that the Company assigns return travel by air, the driver may ask his Driver Manager to receive one-half of the airfare the Company would have paid for the assigned flight and the driver will become solely responsible for all return travel expenses incurred. This is provided that the driver returns back by air travel to the terminal in the approximate same amount of time as he would have if he had used the Company assigned air travel.

Section 2. Off Time Travel Home - Back To Terminal

The Company shall arrange one way air travel for driver employees who have earned or been granted time off and lives outside the 200 miles radius from the terminal. As an alternative the employee may opt to have the Company arrange return air travel from his time off back to the terminal. The one way air travel shall be to or from the closest Metropolitan airport of such employee's residence.

ARTICLE 8 CREW LEADER

The Company at its discretion may establish Crew Leader positions. It is understood by the parties that crew leaders do not have the authority to hire, terminate, discipline, or show favoritism. It is further agreed that any Crew Leader who violates any of these provisions shall be excluded from the bargaining unit. The Company reserves the right to terminate this classification and this clause, at any time, if it deems it necessary due to good business practices, providing that prior to any such action the Union and the Company will meet to discuss.

CrewLeader Differential

\$.30 per hour

ARTICLE 9 UNION STEWARDS

A Steward may be appointed at the direction of the Union. In case of any minor difficulty in the shop the Steward shall, upon notification to management, be permitted to take the standard of the shop the Steward shall, upon notification to management, be permitted to take the standard of the shop the Steward shall, upon notification to management, be permitted to take the shall be shall

Discontract Lidor

- Employees on such Union leave shall not lose seniority and the Union reserves the right to pay the employees benefits during this time period.
- Employees going on a personal leave of absence from the Company will not have benefits paid, but will retain their seniority position from the time of the leave of absence. The maximum length of time for a lenve of absence is thirty (30) days unless changed by mutual agreement between the Company and the Union.

ARTICLE 19 SUB-CONTRACTING V

- 1. The Company agrees that it will not subcontract work while available employees who can do that work are on layoff
- 2 The Company further agrees that it will not subcontract work that available employees are capable of performing. In order to implement this principle, the parties agree to the following
 - a. The Company recognizes that a subcontractor shall not be given a load if an available employee of the Company is without a load. In such cases, the employee of the Company shall have the choice to take the subcontractor load or wait for a new Board to be posted
 - The Company recognizes that loads should be paired and assigned to the maximum extent practicable in order that its employees, not subcontractors, are able to take
 - longer and/or more lucrative loads.
 c. The Terminal Manager and the Union's designee at the Terminal shall consult as they deem appropriate in such pairing and assigning of loads.
- 3. In order to address situations where the pressures of dispatch nevertheless produce situations which may appear unfair to Company employees, the Company agrees to create a Fund as of October 1, 2008, to be allocated by the Union in its discretion to remedy such situations. The Fund will be generated by the Company's contribution over the term of the collective bargaining agreement of \$ 05 per mile for each mile that a subcontractor drives over 600 miles in moving a load. It is not intended for this Fund to be used in cases of contract violations, which shall be handled under the Grievance and Arbitration process
- 4 The Company shall quarterly furnish the Union with a list of all subcontracted loads,

ARTICLE 20 NO STRIKE/LOCKOUT AND WORK STOPPAGE

Section 1. No Strike and/or Lockout

The parties agree that any and all grievances and questions of interpretation arising from or in any way pertaining to the provisions of this Agreement shall be submitted to the grievance procedure for determination.

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LETTER OF AGREEMENT

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' knosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011

Agreed to this 29th day of September, 2008

On Behalf of IronTiger Logistics, Inc.

Thomas J Jones, Jr.

Title: Attorney for fron Figer Logistics, Inc.

International Association of Machinists and Aerospace Workers

Boysen Anderson
Title Automotive Coordinator







I hereby authorize the Union to act as my designated agent in the processing of this grievance and hereby authorize the Union to settle, withdraw or take any other action on my behalf. TODAY'S DATE MARCH 29, 2010 Grievance No. C-1-10

NAME OF COMPANY: JRONTIGER LOGISTICS, INC			
Date of violation_ON OR ABOUT MARCH 15, 2010 AND CONTINUING TODAY Trip No			
Terminal of violation: Dublin x Garland x Macungie x Springfield x			
Contract violation YES Article 6,7, Section (5) (a) Other			
Nature of Grievance The Employer is not placing all available loads on the dispatch board; Not making reasonable return air travel for drivers.			
Settlement Desired: All loads to be placed on the board asap! - employer will make return air travel on the most direct available plights that will not cause exturn delays. All drivere shall be whole for all losses when not allow to pick from all available loads.			
To be made whole for all losses.			
Reinstatement with full seniority and all rights.			
Signed: CLASS ACTION GRIEVANCE Home Terminal Phone No. (Aggreend complores) Union Representative: Appen A Ancheron			
Company Answer:			
Date: Signed:			
This Grievance was discussed by the undersigned with			
Company Representative on(date) Signed			
WAS THE COMPLAINT SETTLED? YES NO If "ao", was grievance referred to next step of grievance Procedure?			
Yes NO DATE Signature of Union Representative			
HAS THE EMPLOYEE BEEN NOTIFIED OF DECISION? Yes NO			

From: Tom Duvaii [tom@@uuckmovers.co.-]
Sent: Tuesday, April 13, 2010 8:29 PM
To: Thomas Krukowski; Grinsley@aol.com

Subject: Fwd: Dispatch

Another email chain for the fire

----- Forwarded message -----

From: Tom Duvall < tom@truckmovers.com > Date: Tue, Mar 16, 2010 at 12:13 PM

Subject: Re: Dispatch

To: Anderson Boysen < banderson@iamaw.org>

1 am

Sent from my iPhone

On Mar 16, 2010, at 10:59 AM, Anderson Boysen < banderson@iamaw.org > wrote:

Bullshit you WILL abide by the contract.

From: Tom Duvall [mailto:tom@truckmovers.com]

Sent: Tuesday, March 16, 2010 11:56 AM

To: Anderson Boysen

Cc: Jones Tom; Hummel John; Walsh Mike IAM; Ashley Dale; Wooten Jeff Sr.; Hammond

Mark; magill don **Subject:** Re: Dispatch

We don't set the priorities. Our customer does.

On Tue, Mar 16, 2010 at 10:28 AM, Anderson Boysen < banderson@iamaw.org > wrote.

Tom - don't question me on what I believe, here are the facts, one driver 1 load - two drivers 2 loads - six drivers 6 loads. Enough of this bullshit

Boysen

From: Tom Duvall [mailto:tom@truckmovers.com]

Sent: Tuesday, March 16, 2010 10:54 AM

To: Anderson Boysen

Cc: Jones Tom; Hummel John; Walsh Mike IAM; Ashley Dale; Wooten Jeff Sr.; Hammond

Mark; magill don **Subject:** Re: Dispatch

All available IronTiger loads ARE placed on the board for dispatch. If you believe that they are not, please give me some specifics so that I can investigate.

×

Re: Dispatch

From: Tom Dovall <tom@inudenovers.com>
To: Anderson Boysen
banderson@iamaw.org>

Co: Jones Tom «Crinsley@act.com»; Hummet John sjohn@rockmovers.com»; Waish Mike IAM smjwad447.@act.com»; Ashtey Date «datesvet@yahoo.com»; Wosten Jeff Sr. «wootenastomotive@dishmet.net», Hammond Mark «mhammond@lamaw.orp» magiif don «donmagil@yahoo.com»;

Date: Tue, Mar 16, 2010, 10:56 am

We don't set the priorities. Our customer does.

On Tue, Mar 16, 2010 at 10:28 AM, Anderson Boysen bearing-same-org wrote:
Torn - don't question me on what I believe, here are the facts, one driver I load - two drivers 2 loads - six drivers 6 loads. Enough of this bullshit

From: Tom Duvail [mailto:tom@truckmovers.com]

Sent: Tuesday, March 16, 2010 10:54 AM To: Anderson Boysen

Cc: Jones Tom; Hummel John; Walsh Mike IAM; Ashley Dale; Wooten Jeff Sr.; Hammond Mark; magill don

All available IronTiger loads ARE placed on the board for dispetch. If you believe that they are not, please give me some specifics so that I can investigate

On Tue, Mar 15, 2010 at 8:24 AM, Anderson Boysen bonderson@lemaw.org wrote Tom - once again the company is not complying with the dispetch language in the C8A thus the final warning notice from the IAM. So that we are clear ALL AVAILABLE LOADS ARE TO BE PLACED ON THE BOARD FOR DISPATCH. We have am Agreement and the company will comply.

Boysen

Sent from IAM Automotive Department

Notice. This message is intended for the addressee only and may contain privileged and/or confidential Information. Use or dissemination by anyone other than the intended recipient is prohibited.

Tom Duvall, President/CEO TruckMovers.com, inc. p. 816.878.6872 f 816.878.6376

Boysen D Anderson.

Boysen D Anderson.

Automotive Coordinator / Int'l Assoc of Mathities & Aerospace Workers

Upper Mathiono.

Exhibit 6



RE: CBA Violations

From: Anderson Boysen barnderson@famaw.org

To: Tom Duvall dom@truckmovers.com>

Co: Tom Jomes Scripsley@adi.coms; Mike IAM Walsh (mlyrad447@adi.com) smjwad447@adi.com; Hammorid Mark smhammond@iamaw.orp> Date: Mon. Apr 5: 2010 4:08 pm

I am responding to you e-mail excerpts below.

Your e-mail misstates several facts and contrary to your contention and claim the Company are not violating the provisions the in the Union Grievance Report. This is to advise you that the Union rejects your contention and claim. The Union repeatedly warned you of these violations and breach also the Union met with you several time on these issues. You choose to intentionally ignore the Agreement. In short, the Union believes another meeting on these issues will be none productive and will proceed with it's course of actions to correct the contract breach.

Boysen D Anderson Automotive Coordinator / Int'l Assoc. of Machinists & Aerospace Workers 9000 Machinist Place Upper Marlboro, MD 20072-2687 301-967-4556 Office 301-967-3432 Fax 301-346-2239 Cell

From: Tom Duvall [mailto:tom@truckmovers.com]

Sent: Monday, April 05, 2010 11:33 AM

To: Anderson Boysen

Cc: Tom Jomes; Mike IAM Walsh (mjwad447@aol.com); Hammond Mark

Subject: Re: CBA Violations

Boysen,

The Company is in receipt of your class action grievance alleging violations of Article 6-Master Dispatch Procedure and Article 7-Return Travel.

The Company respectfully disagrees with your allegations and states that the Company is in compliance with the provisions of Article 6-Master Dispatch Procedure as well as the provisions of Article 7-Return Travel.

Further, concerning your allegations regarding Article 20, Section 1, the Company denies that it has intentionally ignored any of the provisions of the National Mester

It is respectfully suggested that we set up a meeting to see if we can resolve what is an obvious difference of opinion as to the meaning and/or interpretation of the aforementioned Articles. If we are not able to agree then the matter should be submitted to the grievance procedure for determination as set forth and required by Article 20, Section 1.

Remards.

Tom

On Mon, Mar 29, 2010 at 10:04 AM, Anderson Boysen < banderson@iamaw.org> wrote:

Tom - attached you will find a class grievance on the continuing contract violations. Also, this shall serve as the notice to cure the contract provisions breach outlined in the attached grievance, if the Company ignores this notice the Union will proceed on this grievance under Article 20, Section 1.

Boysen D Anderson Automotive Coordinator / Initi Assoc. of Machinists & Aerospace Workers 9000 Machinist Place Upper Mariboro, MD 20072-2687 301-967-4556 Office 301-967-3432 Fax 301-346-2239 Cell

Notice: This message is intended for the addressee only and may contain privileged and/or confidential information. Use or dissemination by anyone other than the intended recipient is prohibited.

Exhibit 7

From: Tom Duvall [tom@truckmovers.com] Sent: Friday, May 07, 2010 10:45 PM

To: Anderson Boysen

Cc: Mike IAM Walsh (mjwad447@aol.com); Hammond Mark; Grinsley@aol.com; Thomas Krukowski

Subject: Re: Information Request

Boysen,

Please find responses to your inquiries below, in order:

1. Garland - TruckMovers BJ291895, BJ276129, BJ316065, BJ316095, BJ318106, BJ324603, BJ331350, BJ318260, BJ331446, BJ331496, BJ331661, BJ332884, BJ324220, BJ335080, BN335214, BJ336423, BJ336850, BJ337156, BJ339103, BJ341814, BJ341874, AJ219476, AJ219418, BJ319226, BJ275845, BJ276130, BJ276132, BJ279062, BJ276736, BJ276738, BJ325816, BJ276740, BJ327173, BJ328469, BJ287608, BJ287403, BJ328808, BJ314162. BJ287405, BJ329329, BJ289948, BJ329436, BJ315923, BJ330910, BJ310121, BJ330912, BJ310124, BJ315258, BJ315264, BJ335139, BJ316088, BN323408, BJ339111, BJ344585, BJ255503, BJ276742, BJ283621, BJ193670, BJ272471, BJ282253, BJ286268, BJ315295, BJ314233, BJ323452, AJ271564, BJ324850, BJ339834, BJ343272, BJ345030, BJ331063, AJ288471, BJ331381, BJ331470, AN290498, 9J219221, BJ177297, BJ177299, AJ220311, 9J194348, AJ219469, AJ220302, BJ344034, BJ285045, AN277730, BJ286831, BJ318237, BJ289635, BJ318243, AJ288712, BJ319399, BJ309103, BJ310122, BJ324966, BJ324968, BJ330921, BJ330922, BJ330924, BJ314311, BJ330948, BJ314626, BJ334243, BJ314628, BJ314630, BJ315088, BJ315096, AJ219572, BN315486, BJ335103, BJ335195, BJ272703, BJ326324, BJ336289, BJ336428, BJ338214, BJ339131, BJ322496, BJ344867, BJ344997, BJ344999, AN287552, BJ318351, AN287599, BJ326218, BJ330717, BJ332876, BJ333965, BJ324974, BJ334772, BJ326972, BJ334775, BJ330950, BJ336278, BJ339141, BJ343268, BJ343547, BJ345369, BJ345698, BJ345942, BJ347903, BJ255523, BJ315211, BJ315228, BJ255492, BJ255500, BJ255502, BJ319518, BJ264568, BJ276663, BJ276698, BJ177301, BJ276700, BJ276702, BJ276745, BJ277213, BJ331094, BJ278565, BJ281665, BJ335984, BJ336288, BJ289319, BJ337351, BJ338094, BJ292338, BJ310111, BJ310113, AL320103, 9J219348, AJ286360, AJ286365, AJ220295, BJ255506, BJ276704, BJ276706, BJ277214, BJ277317, BJ277319, BJ277869, BJ278546, BJ337297, BJ177305, BJ265490, BJ266723, BH317498, BJ320072, BJ323325, BJ272379, AJ219598, BJ346467, BJ347838, BJ291113, BJ308509, BJ313816, BJ314149, BJ354442, BJ255507, BN267034, BJ277882, BJ326378, BJ277897, BJ330728, BJ330730, BJ278637, BJ331895, BJ332958, BJ289238, BJ335185, BJ335743, BJ289637, BN290566, BJ336705, BJ318279, BJ318292, BJ318355, BJ318457, BJ336929, BN323457, BJ326139, BJ326575, BJ326581, BJ326601, BJ326603, BJ326607, BJ327047, BJ327053, AJ219580, AJ219582, AJ219584, BN266698, BJ267051, BN268134 BJ287441, BJ289242, BJ289244, BJ309977, BJ310125, BJ310127, BN315374, BJ317325, BJ319402, BJ319761, BJ319811, BJ321071, BJ322739, BJ323196, BJ323387, BJ322827. BN323483, BJ326790, BJ325031, BJ331299, BJ326153, BJ333664, BJ335186, AN288325, BJ318270, BJ335106, BJ335109, BJ335110, BJ335112, 9J194363, BJ354686, 9J194494, AJ219593, BJ289652, 8J651686, BJ319989, BJ323846, BJ331302, AJ259581, BJ284929, BJ327900, BJ332372, BJ334802, BJ336417, BJ331084, BJ289955, BJ333671, BJ314230, BJ340909, BJ336383, BJ336435, BJ336438, BJ354796, BJ355014, BJ355190, BJ355506, BJ317326, BJ322712, BJ322776, BJ322820, BJ323551, BJ323552, BJ319993, BJ331083, BJ324853, BJ331321, BJ331323, BJ331363, BJ326193, BJ326951, BN328075, BJ337177, BJ337375, BJ194540, BJ265503, BJ337576, BJ336414, AJ219447, BJ354877, BJ356398, BJ289326, BJ314511, BJ315252, BJ325793, BJ325801, BJ325807, BJ326590, BJ326871,

1/26/2011 3:43 PM

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- 2. Don Houk. TruckMovers, Kansas City, MO
- 3. Don Houk. TruckMovers, Kansas City, MO
- 4. N/A. Done by system assignment not through email or other written communication.
- 5. Garland IronTiger BJ287060, BN287302, AJ219653, AJ219654, AJ219670, BN267094, BJ281457, BJ314205, BJ314513, BN315132, BJ318903, BJ322719, BJ323895, BJ324999, BJ326222, BJ328438, BJ330459, BJ330925, BJ331157, BJ331224, BJ331399, BJ318348, BJ331747, BJ332398, BJ332879, BJ332887, BJ332973, BJ330624, BJ330995, BJ332896, BJ334369, BJ337154, BJ337469, BJ339101, BJ339105, BJ339108, BJ339113, BJ340957, BJ341370, BJ343034, BJ343209, BJ344568, AJ219471, BJ344591, AJ219473, BJ344593, BJ344764, AJ219355, AJ219357, BN249875, AJ219359, BN249877, BN249884, AJ219420, BN249887, AJ219422, BJ267705, BJ246926, BJ255490, BJ323535, BJ275847, BJ264559, BJ324997, BJ264566, BJ325810, BJ276254, BJ325812, BJ325814, BJ326568, BJ281267, BJ326570, BJ281446, BJ326572, BJ326574, BJ326887, BJ285607, BJ328065, BJ328271, BJ287270, BJ287401, BJ328771, BJ289312, BJ329337, BJ315920, BJ289950, BJ330365, BJ291339, AL291396, AL291417, BJ330914, BJ314612, BJ330916, BJ314650, BJ330918, BJ330919, BJ331821, BN315474, BJ334199, BN315481, BJ334247, BN315484, BJ334250, BJ316070, BJ337291, BJ338406, BJ338968, BJ324203, BJ339114, BJ339118, BJ339122, BJ341916, BJ344291, AN170493, BJ344532, BJ344632, BJ344729, BJ344765, BJ344771, BJ344832, BJ344888, AJ219360, AJ219423, BN275301, BJ279970, BJ285391, BJ287406, BN249873, BN288734, BN249927, BN291368, BN291379, AL291781, BJ291858, BJ314611, AJ270714, AJ219464, AJ219466, AJ219468, BJ270523, 9J269708, BJ287285, BJ287287, BJ287289, BJ315297, BJ287291, BJ315325, BJ287293, BJ287296, BJ318329, BJ322853, BJ322478, BJ324751, AJ272715, AN275316, BJ325818, BJ334410, AN277654, BJ325820, BJ339115, BJ326744, BJ339120, BJ327091, AJ281820, BJ327607, BJ341535, BJ329967, AN284754, BJ330753, BJ343947, AN285385, BJ330756, AN287367, BJ330907, BJ345311 BJ345544, BJ331260, AJ288473, AN288577, AN288579, AN289663, AN291447, AN315263, 9J219218, 9J219224, AJ264554, BJ177294, AJ281710, AJ286381, AJ219673, BJ265420, BJ265475, BN266839, BN267232, BJ277742, AJ221687, BJ343345, BJ343486, BJ343854,

8 of 32 1/26/2011 4:22 Pi

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- Dublin Dave Tatum, Steve Thomas, Macungie Don Hartman, Mike HeckSpringfield Dan Schreier, Shawn ChristiansenGarland - John Carter, Catina Henderson
- 7. Dublin Dave Tatum, Macungie, Don Hartman, Springfield Dan Schreier, Garland John Carter
- 8. N/A. Done by system assignment not through email or other written communication.

Tom

On Mon, Apr 12, 2010 at 10:32 AM, Anderson Boysen < banderson@iamaw.org> wrote: Tom,

The Union is requesting the following information:

- 1. List of all units dispatched to Truckmovers drivers within the past six (6) months at each IronTiger Logistics, Inc. terminal.
- 2. Identify all person(s) who are responsible for dispatching units to the Truckmovers drivers at each IronTiger Logistics, Inc. terminal.
- 3. Identify all person(s) that made the decision to dispatch the units to the Truckmovers drivers at each IronTiger Logistics, Inc. terminal.
- 4. Provide all e-mails, transcripts, faxes, telecommunications and other documentation to support why these units were dispatched to Truckmovers drivers.
- 5. List of all units dispatched to Irontiger drivers within the past six (6) months at each IronTiger Logistics, Inc. terminal.
- 6. Identify all person(s) who are responsible for dispatching units to the Irontiger drivers at each IronTiger Logistics, Inc. terminal.
- Identify all person(s) that made the decision to dispatch the units to the Irontiger drivers at each IronTiger Logistics, Inc. terminal.
- 8. Provide all e-mails, transcripts, faxes, telecommunications and other documentation to

31 of 32

817 97B 292B ... P.05

FORM EXEMPT UNDER 44 U.B.C. 3512

Foom MLRB-501 (8-07)

United States of America National Labor Relations Board CHARGE AGAINST EMPLOYER

	PO CONTRACTOR OF STATE			
DO NOT WRITE IN THIS SPACE				
Сеев 16-CA-27543	7-15-2010			

STRUCTIONS.	

INSTRUCTIONS:
File an original and 4 copies of this charge with the NLRB Regional Director for the region in which the alleged Unfair labor practice occurred or is occurring.

4 Min ov		<u> </u>
R. Name of Employer	ER AGAINST WHOM CHARGE IS BROUG	b, Number of workers employed
		APPROX. 6D
Iron Tiger Logistics, Inc.		
a. Address (Street, city, state, and 21° code) 3901 BlueRidge Cut Off	d, Employer Representative Tom Duvalt, President, CED	e. Telephone No. (816) 676-8672
Cansas City, MO 64133		Fex No. (816) 878-6372
i. Type of Establishment (fectory, mine, wholeseler, etc.) Truck Mover	g. Identity principal product or service Transport New Trucks	
The above-named employer has engaged in and to engaging subsections). 6(6)(1) and (5) practices are unfelt labor practices effecting commerce with within the meaning of the Act and the Postal Recognitivestices.	of the Ne the meaning of the Act, or these unfair labor prac-	Honel Labor Relations Act, and these unter labor
2. Basis of the Charge (set forth a dear and concles statement	of the facts constituting the alleged unlet lebel pr	eclicae)
Information by the exclusive bargaining agant of the common state	Moers, egents or representatives, fr	os interfered with, restrained or coerced
 Full name of party filing change (Flator organization, give the INTERNATIONAL ASSOCIATION OF MACHINE 		S, AFL-CIÓ
4a. Address (street and number, city, atale, and ZIP code)		4b, Telephone No. (214) 638-8545
1711 W. MOCKINGBIRD LANE, BUITE 1357, DALL	AB, TX 75247	Fex No. [214] 637-2803
5. Full name of retional or international labor organization of wi	with it is an attitude or constituent unit (to be filled	In when charge is filed by a labor organization)
INTERNATIONAL ASSOCIATION OF MACHI	NISTS AND AEROSPACE WORKERS	3, AFL-CIO
, J	DECLARATION Targe and that the statements are true to the best	of my knowledge and ballof.
Bloomy of markets from making sheet	Remon A. Gu	reis. Grand Lodge Representative type name and life or office, if any)
(Bignature of representative of person making charge)	Telephone No. (214) B3E	
1111 W. Mockingbird Lane, Suite 1357 Address Dallas, TX 75247	Dute July 15, 20	10

WILLFIL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, BECTION 1991)
PRIVACY AOT STATEMENT
Solicitation of the Information on this form is authorized by the National Labor Relations Act (NLRA), 20 U.S.C. 151 of seq. The principal use of the information to legislate Notional Labor Relations Based (NLRB) in processing unfair labor practice and related processings or Rightien. The routine uses for the information are fully set furth in the Federal Rogisler, 71 Fod. Reg., 74062-43 (Dec. 13, 2005). The NLRB with inches explain chass uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will crosse the NLRB to decline to invoke its processes.



United States Government

NATIONAL LABOR RELATIONS BOARD

REGION 16 Room 8A24, Federal Office Building 819 Taylor Street Fort Worth, Texas 76102–6178

Agency Wab Site: www.nlrb.gov

September 27, 2010

Mr. Thomas Krukowski Krukowski & Costello, S.C. P. O. Box 28999 Milwaukee, WI 53228-0999

Re: Iron Tiger

Case No. 16-CA-27543

Dear Mr. Krukowski:

This is to advise that with my approval an allegation in the above-referenced charge has been withdrawn as follows:

Since on or about April 12, 2010, the above-named Employer, through its officers, agents or representatives, has failed and refused to bargain in good faith with International Association of Machinists and Aerospace Workers AFL-CIO, a labor organization chosen by majority of its employees in an appropriate unit, for the prupose of collective bargaining in respect to rates of pay, wages, hours of employment and other terms of employment; specifically, the employer has refused to furnish requested information by the exclusive bargaining agent of the employees.

Further processing will continue on the remaining allegation of the charge concerning the information request dated May 11, 2010 and resubmitted to the Employer on July 30, 2010.

Sincerely,

Martha Kinard Regional Director

cc: Mr. Boysen Anderson, Coordinator Automotive Department 9000 Machinists Place Upper Marlboro, MD 20772-2687

> Mr. Tom Duvall, President, CEO Iron Tiger Logistics, Inc. 3901 BlueRidge Cut Off Kansas City, MO 64133

Sent: Monday, September 27, 2010 6:41 PM

To: banderson@iamaw.org; mhammond@iamaw.org
Cc: tom@truckmovers.com; Thomas Krukowski

Subject: IAM Information Request

Boysen and Mark:

Regarding the Union's request for information, on April 12, 2010, we received your request for information and responded on May 7, 2010 On May 11, 2010 you submitted a second request for much of the same information you received, and on July 30, 2010 resubmitted the exact same request.

If we did not make it clear to you in our response to your grievance, earlier e-mails and conversations, let me re-state our position: there is no contract violation and your requests for information are irrelevant because the Letter of Agreement states

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011.

Agreed to this 29th day of September, 2008.

Regardless of your inquiries being irrelevant and our May 7, 2010 responses, here is our position, which you should already be well aware of.

 Please provide the names for each TruckMovers driver dispatched on the referenced unit(s) outlined in your paragraph No. 1

This request is irrelevant. TruckMovers drivers are non-unit employees, non-union and the IAM does not represent any of the TruckMovers drivers, presumptively not relevant Approximately thousands of units were dispatched during the specified time period. This could potentially involve hundreds of drivers and is not only an irrelevant but also burdensome request

b) Please provide the destination and mileage for each unit(s) dispatched to TruckMovers drivers in your paragraph No 1

This request is also irrelevant due to the fact that TruckMovers drivers are non-unit employees, non-union and the IAM does not represent any of the TruckMovers drivers, presumptively not relevant. There were approximately several thousand of listed units dispatched in the six-month period. This request is burdensome and irrelevant (Also, see the answer to question (a) above).

Please identify Don Houk primary employer.

As stated in the May 7, 2010 response, Don Houk's primary employer is TruckMovers

d) Please provide Don Houk job title

This is irrelevant, however, Don Houk is Chief Operating Officer (COO) and minority shareholder

e) Please provide the name(s) of the person who authorize Don Houk to dispatch the referenced unit

1/21/2011

(s) outlined in your paragraph No. 1 to TruckMovers drivers.

This is irrelevant; however, Don Houk is Chief Operating Officer (COO) and minority shareholder (owner). It is Mr. Houk's job responsibility to perform this work.

f) Please provide in details the "System Assignment" you referenced in your paragraphs 4 and 8

As explained in the May 7, 2010 response, all requests to move trucks are received by the computerized system. Dispatch assignments are also made through the system.

g) Provide all e-mails, transcripts, faxes, telecommunications and other documentation from your customer(s) to support the units in your paragraph No. 1 be dispatched to Truckmovers drivers.

Again, as described in the May 7, 2010, response, all dispatch is done by system assignment on the computer and not through email or other written communication.

All requests are received and transmitted via the Company's computerized program. There are no written documents, e-mail, faxes, telecommunications, transcripts or any other form of written document regarding the dispatch of units.

h) Please provide the names for each IronTiger driver dispatched on the referenced unit(s) outlined in your paragraph No. 5.

What is the relevancy of this request? Why is this important or how could this possibly be important because this is work already done and these were dispatched to IronTiger drivers? There were approximately 10,500 listed units dispatched in the specified six-month period. This request is harassment, burdensome and irrelevant.

i) Please provide the destination and mileage for each unit(s) dispatched to IronTiger drivers in your paragraph No.

What is the relevancy of this request? Why is this important or how could this possibly be important because this is work already done and these were dispatched to IronTiger drivers? There were approximately 10,500 listed units dispatched in the six-month period. This information request is harassment, burdensome and irrelevant

j) Provide all e-mails, transcripts, faxes, telecommunications and other documentation from your customer(s) to support the units in your paragraph No 5 be dispatched to IronTiger drivers

Again, as described in the May 7, 2010, response, all dispatch is done by system assignment not through email or other written communication.

All requests are received and transmitted via the Company's computerized program. There are no written documents, e-mail, faxes, telecommunications, transcripts or any other form of written document regarding the dispatch of units.

This, plus your comments that you intend to organize Truckmovers drivers (for which you stated you already have authorization cards), among other arguments, such as burdensome and harassing, makes this requested information irrelevant and inappropriate. Further, we asked you for a meeting early on to discuss the issues regarding your grievance C-1-10 and our response to your grievance dated April 5, 2010 and you flatly refused to meet. A meeting could have been helpful if you wanted to discuss any of these issues; your decision. If you now want to meet or discuss any of these issues, please let me know.

Tom Jones

With Attachments

Cc Tom Duvall Tom Krukowski

1/21/2011

From: Anderson Boysen [banderson@iamaw.org]

Sent: Tuesday, October 12, 2010 5:42 PM
To: grinsley@aol.com; Hammond Mark

Cc: tom@truckmovers.com; Thomas Krukowski

Subject: RE: IAM Information Request

Tom:

I am responding to your e-mail dated September 27, 2010.

The Letter of Agreement ("LOA") has nothing to do with the Union's request for information. During negotiations in 2008, the Company's acknowledgement that IronTiger Logistics, Inc. would be receiving at least 75% of the Volvo's work with other carriers moving 25% of the work including, but not limited to Truckmovers. The LOA acknowledge other carriers would get loads from the customer too. In fact, your interpretation of the LOA flies in your face of the established practices since October 2008. Additionally, the Company's history of taking loads off the IronTiger board and giving these loads to Truckmovers' drivers makes the information requested by the Union relevant to process such grievances. And so the record is clear, the Union rejects the Company's assertion there is no contract violation.

Also, be advised of the following:

The information requested in (a), (b), (h) and (i) are relevant to investigate the grievance because in the past the Company removed loads from the IronTiger board and dispatch such loads to non-union drivers.

As to your response in (e), the information is relevant to investigate the grievance due to the past history when the Company given loads off the IronTiger board to TruckMovers drivers. Also, indentify all officers of the TruckMovers Company.

As to your response in (f) and (g), the Union rejects the Company's response.

As to your response in (h) and (i), the relevancy for such information is to investigate the appropriate grievances.

As to your response in (j), the Union rejects the Company's response.

In closing, this shall serve as the Union's third request to provide all information requested on May 7, 2010.

Boysen D Anderson, Automotive Coordinator / Int'l Assoc. of Machinists & Aerospace Workers 9000 Machinist Place Upper Marlboro, MD 20072-2687

1/21/2011

Sent: Wednesday, October 13, 2010 2:02 PM

To: banderson@iamaw.org

Cc: tom@truckmovers.com; Thomas Krukowski

Subject: Re IAM Information Request

Boysen,

I am responding to your e-mail dated October 12, 2010. You state, "... the Company's history of taking loads off the IronTiger board and giving these loads to Truckmovers' drivers makes the information requested by the Union relevant to process such grievances." We are not aware of taking loads off IronTiger's drivers klosk and giving a load to a Truckmovers driver or any other driver and any other contract violation. If you believe we removed loads from the IronTiger's board please provide me with the specifics of your claim so that we can investigate and evaluate your statement of the Company's history of making these changes. Please tell me when, where, what loads were removed, who was affected and how many times this happened and I will be happy to investigate your claim or claims.

Regarding the labor contract, it has no qualifiers and there is no contract violation. Are you sure of your position? If you do not have any evidence of a contract violation, why did you file the grievance? Are you unsure of your position and is that why you are seeking information at this time because you do not know or have information of a contract violation? Do you need to determine if the grievance has merit?

That all being said, we should still meet, as the Company has previously requested, to discuss your grievance and your request for information. We believe besides the request seeking irrelevant information, your request is ambiguous, overbroad and burdensome and by meeting we hope we can clarify your request and possibly come to some arrangement that can be mutually satisfactory.

Give me a call so that we can meet.

Sent: Monday, October 25, 2010 5:36 PM

To: banderson@iamaw.org

Cc: tom@truckmovers.com; Thomas Krukowski

Subject: IAM Information Request

Boysen:

Again I want to set the record straight; I am not aware of any contract violations and I do not have amnesia. Your statement in your October 12, 2010 e-mail and the underlying grievance are inconsistent. The grievance refers to all loads and the later position states the removal of loads—which is it? And again you can short circuit this entire matter if you tell us of any contract violations. We are again asking for this information so we can process your grievance. If we made a mistake we can rectify those issues quickly and make whatever payment is necessary. Further, your request for information is irrelevant to your grievance and, as important, can't we just meet to discuss the issues and if we can not immediately resolve your issues, which we believe we can, at least we can understand your request, which is also ambiguous, overly broad and an unnecessary burden. The request for information is, at best, confusing. By meeting we can clarify your request and come to an arrangement that can be mutually satisfactory.

Again, I am asking you to give me a call so we can meet. If you don't want to meet regarding this matter, please advise in writing and I will quit asking.

Sent: Tuesday, December 07, 2010 5:37 PM

To: banderson@iamaw.org

Cc: tom@truckmovers.com; Thomas Krukowski

Subject: Request for Meeting

Boysen:

On November 29, 2010, you again have neglected to respond to our request for a meeting. We get it. You're refusing our request. That's not right but it's your choice!

Secondly, the e-mail you attached is ancient history and we mutually resolved that issue in early 2009, over 20 months ago.

Thirdly, you still have failed to give me any reference to a specific violation of the contract and your underlying grievance is meaningless in light of the Letter of Agreement. As you know, and as the contract provides, the Letter of Agreement applied to all terminals covered by the CBA. The CBA and our prior discussions and mutual understandings and practices have been consistent and for you to now state otherwise is unbelievable and undermines your credibility.

Your request for information is irrelevant without more; among other reasons, it is also harassment; it's also ambiguous, overbroad and burdensome and that, at least needs clarification. That being said, the company is prepared to defend its position as outlined in this and all other e-mails, the CBA and other facts. Your position is also unintelligible and we will defend our right to illustrate just that.

grinsley@aol.com From:

Friday, December 10, 2010 9:17 AM Sent: To: tom@truckmovers.com; Thomas Krukowski

Subject: Fwd Request for Meeting

FYI

----Original Message----

From: Anderson Boysen <banderson@iamaw.org> To: grinsley <grinsley@aol.com> Cc: Haller William <whaller@iamaw.org>
Sent: Thu, Dec 9, 2010 2:39 pm Subject: RE: Request for Meeting

Tom - in response to your email of December 7th, let me try to reformulate my information request to address your concerns.

On April 12th, I wrote to you and requested "all e-mails, transcripts, faxes, telecommunications and other documentation to support why . . . unitswere

dispatched to Truckmovers drivers." (Request #4)

You responded on May 7th by stating: "N/A. Done by system assignment not through email or other written communication."

What is the "system assignment" you are referring to? How does this "system assignment" distinguish between IronTiger and any other entity (such as TruckMovers) in determining the assignment of dispatches?

In what form does IronTiger receive communications from its customers regarding units to be transported? Please provide copies of such communications for all unit orders during the past six months. If the response to this request would be unduly burdensome, please estimate the volume of the response, and we can discuss how the request may be modified so as to lessen or eliminate the burdensome nature of your response.

For your information, the IAM's basis for making these requests is the language of Article 6 of the Master Agreement, which provides that "all available loads will be placed on one board in the order of importance of delivery." The information requested is necessary to determine whether, in fact, IronTiger is placing all available loads on the board.

Also, we have no mutual understandings and practices that the Letter of Agreement applied to all terminals covered by the CBA. You do not have an iota of evidence to support such understanding and practices. Your position is appalling.

Boysen D Anderson, Automotive Coordinator /Int'l Assoc. of Machinists & Aerospace Workers 9000 Machinist Place Upper Marlboro, MD 20072-2687 301-967-4556 Office 301-967-3432 Fax 301-346-2239 Cell

From: grinsley@aol.com [mailto:grinsley@aol.com]

Sent: Tuesday, December 07, 2010 6:37 PM To: Anderson Boysen

1

Sent: Monday, December 20, 2010 7 42 PM

To: banderson@iamaw.org

Cc: tom@truckmovers.com; Thomas Krukowski

Subject: Request for information

Boysen,

I am responding to your December 9, 2010 e-mail regarding your request for information. Let me say again that the company has complied with the CBA and your quote from it, "all available loads will [have] be[en] placed on one board in the order of importance of delivery." This practice has been done at all four of our terminals in the same manner and has complied with the CBA. Are you aware of any incident this has not happened in the entire time each of any of the four terminals have been open except the one time or incident in March 2009, which was satisfactorily resolved? Further, you changed your position on your request; first it was all loads and then it was removed loads that you had to clarify recently. Now your most recent e-mail says you are going to again make a change and "try to reformulate my information request."

Your request for information is confusing and now you limit your request to two concerns. You want to know:

- 1. What is the "system assignment" you are referring to? How does this system assignment "distinguish between IronTiger" and any other entity (such as TruckMovers) in determining the assignment of dispatches?
- 2. In what form does IronTiger receive communication from its customers regarding units to be transported? Provide copies of such communications for all unit orders?

Boysen, you know exactly how loads get on the kiosk because we have had that discussion with you numerous times. For examples, as early as our first negotiated CBA, we negotiated this procedure with you and it resulted in the Letter of Agreement (LOA) because of Volvo/Mack's restrictions placed on TruckMovers.com. You understood this restriction and it was your request that the LOA not be put in the CBA but rather made a LOA regarding the kiosk and the procedure because of your concern for AutoTruck and others not seeing it in the contract. Further, you did not want all loads on the kiosk; you just wanted IronTiger loads on the kiosk.

Again, the LOA was your idea and it was negotiated at your request. Further, before we opened up the additional terminals Tom Duvall and I met with you in Ft. Lauderdale, FL on December 16, 2009. The purpose of the meeting was to inform you that TruckMovers.com, Inc. had been awarded the Navistar Contracts in Springfield, Ohio and Garland, Texas.

You were told that Navistar was even more strict in the requirements than Volvo/Mack, regarding the maximum percentage of loads/trucks that could be assigned by TruckMovers.com, Inc. to any one particular carrier including IronTiger. Navistar preferred that TruckMovers.com, not assign more than 50% of such loads to any one particular carrier, including IronTiger and demanded that TruckMovers.com not assign more than 75% of such loads to any one particular carrier, including IronTiger. You were told and you understood that if TruckMovers.com exceeded this requirement it would be considered a breach of the contract between TruckMovers.com and Navistar.

You were told that TruckMovers.com would initially assign to IronTiger up to 75% of the loads and that we thought we could do so without repercussion from Navistar. TruckMovers.com would try this and see how it worked out. You said you understood and agreed and you specifically stated that this issue had already been addressed in the attached Letter of Agreement to the CBA and that IronTiger and the Union had agreed to regarding loads appearing on the IronTiger drivers kiosk.

You and the Company then discussed the issues relating to the Union obtaining a

majority of the signed Authorization Cards and subsequent recognition of the IAM by IronTiger if, in fact, the IAM obtained a majority of such signed Authorization Cards.

You were told and you knew that IronTiger has no contract with Volvo/Mack or Navistar and the contracts were with TruckMovers.com, Inc.

Boysen, review your October 12, 2010 e-mail to me. While your percentages are wrong and it was not at least, but up to a percentage and not to exceed that percentage of loads. Your e-mail concedes Truckmovers.com, Inc. has the right to have loads moved by other carriers than IronTiger. That's why the LOA was negotiated and why we agreed as early as December 16, 2009 that for the same exact reason it applies to all terminals. You have always known that each terminal has been run the same way!

Further, using your October 12, 2010 e-mail and its admissions if other carriers can be used then other carriers were used and used at all the terminals. See Tom Duvall's 30 page e-mail to you listing TruckMovers.com and IronTiger units for all four terminals. It is exactly the same procedure and unit description for units at each of the four terminals and it has always been the same.

Also see your November 29, 2010 e-mail. You get it but your e-mail does not include all of the facts you are aware of. Again, as you know, IronTiger does not control Volvo/Mack and Navistar work-TruckMovers.com does! IronTiger has not subcontracted any loads and it has not given any work to Truckmovers.com. The opposite is true.

Now, to answer your questions, that you already know the answers to:

- 1. The system assignment is not a written process as I told you before. Kansas City merely gets a call from each terminal manager (TM). In Garland, as all other terminals, for example, the TM calls and tells Kansas City that there will be 10 IronTiger drivers for dispatch. This is a verbal instruction. Kansas City posts 10 runs for IronTiger drivers on the kiosk in the importance of delivery and then 10 IronTiger drivers are dispatched. That's it! Nothing is transferred by e-mail, etc. There is no distinction necessary for Truckmovers or any other carrier because only IronTiger work is posted on the kiosk. That is what you wanted' You should recall this entire procedure because this entire system was negotiated by the Company and Union. Again, the way it works were even your suggestions and recommendations.
- 2. IronTiger only receives the posted information on the kiosk—nothing else! There is nothing else other than this posted information which is generated by the computer and is a mental process of merely sending sufficient loads for the number of available IronTiger drivers in the order of each load and the importance of delivery. Again, there is no paper, no e-mail, no documents. From the kiosk the IronTiger drivers are then dispatched pursuant to the CBA. It's all telephonic and sent to the computer or the kiosk.

Again, if we had met as the Company suggested as early as April 5, 2010, we could have saved you a lot of time discussing and recalling all of the facts. Boysen, while I expect you will respond, please take a minute and review the facts.

Thanks,

Tom

Sent: Wednesday, November 24, 2010 3.25 PM

To: banderson@iamaw.org

Cc: tom@truckmovers.com; Thomas Krukowski; john@truckmovers.com

Subject: Request for Information

Boysen,

You have not responded to my October 25, 2010 e-mail regarding your information request. While the Company is not aware of any violations we will attempt to resolve your grievance and your request for information by meeting and discussing and attempting to understand your claimed violations.

We can discuss this claimed violation with you and, as usual, we can resolve any specifics you have that a violation occurred. Without knowledge of the contract violations that you claim to have we can not resolve our differences and, as important, we can not understand your request for information and how it could possibly relate to your grievance. A meeting is necessary to understand and resolve these two issues.

Again, I am asking you to give me a call so we can set up a meeting. If you don't want to meet regarding this matter, please advise in writing and I will quit asking.

Hope you and your family have a happy and safe Thanksgiving.

Sent: Monday, October 25, 2010 5:36 PM

To: banderson@iamaw org

Cc: tom@truckmovers.com; Thomas Krukowski

Subject: IAM Information Request

Boysen:

Again I want to set the record straight; I am not aware of any contract violations and I do not have amnesia. Your statement in your October 12, 2010 e-mail and the underlying grievance are inconsistent. The grievance refers to all loads and the later position states the removal of loads—which is it? And again you can short circuit this entire matter if you tell us of any contract violations. We are again asking for this information so we can process your grievance. If we made a mistake we can rectify those issues quickly and make whatever payment is necessary. Further, your request for information is irrelevant to your grievance and, as important, can't we just meet to discuss the issues and if we can not immediately resolve your issues, which we believe we can, at least we can understand your request, which is also ambiguous, overly broad and an unnecessary burden. The request for information is, at best, confusing. By meeting we can clarify your request and come to an arrangement that can be mutually satisfactory.

Again, I am asking you to give me a call so we can meet. If you don't want to meet regarding this matter, please advise in writing and I will quit asking.

Sent: Wednesday, October 20, 2010 4:47 PM
To: tom@truckmovers.com; Thomas Krukowski

Subject: Fwd RE: IAM Information Request

Tom and Tom

Please see e-mail below from Boysen regarding e-mail I sent to hom regarding IAM Information Request.

----Original Message----

From: Anderson Boysen

Sent: Mon, Oct 18, 2010 8:35 am

Subject: RE: IAM Information Request

Tom -

Obviously, your amnesia of past violations is an attempt to put up a smoke screen to delay the process. You should ask your client the three W's (when, where and what) regarding the loads IronTiger's given to Truckmovers drivers. As to your concerns regarding the merit of grievance, the last time I checked, the merit of a grievance is the wholly decision of the Union to determine, not the Company. In short, the Union filed the grievance against the Company, the Union needs specific information to investigate the violations, which the Company refused to provide.

Boysen D Anderson, Automotive Coordinator / Int'l Assoc. of Machinists & Aerospace Workers 9000 Machinist Place Upper Marlboro, MD 20072-2687 301-967-4556 Office 301-967-3432 Fax 301-346-2239 Cell

From: grinsley@aol.com [mailto:grinsley@aol.com]
Sent: Wednesday, October 13, 2010 3:02 PM

To: Anderson Boysen

Cc: tom@truckmovers.com; tpk@kclegal.com Subject: Re: IAM Information Request

Boysen,

I am responding to your e-mail dated October 12, 2010. You state, "... the Company's history of taking loads off the IronTiger board and giving these loads to Truckmovers' drivers makes the information requested by the Union relevant to process such grievances." We are not aware of taking loads off IronTiger's drivers kiosk and giving a load to a Truckmovers driver or any other driver and any other contract violation. If you believe we removed loads from the IronTiger's board please provide me with the

1/26/2011